NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service Washington, D.C.

S. HRG. 101-329

IMPLEMENTATION OF THE PAPERWORK REDUCTION ACT OF 1980

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT CONTRACTING AND PAPERWORK REDUCTION

OF THE

COMMITTEE ON SMALL BUSINESS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

IMPLEMENTATION OF THE PAPERWORK REDUCTION ACT OF 1980

SEPTEMBER 7, 1989

Printed for the use of the Committee on Small Business

U.S. GOVERNMENT PRINTING OFFICE

23-709 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S721-2

COMMITTEE ON SMALL BUSINESS

DALE BUMPERS, Arkansas, *Chairman*

SAM NUNN, Georgia	RUDY BOSCHWITZ, Minnesota
MAX BAUCUS, Montana	ROBERT W. KASTEN, JR., Wisconsin
CARL LEVIN, Michigan	LARRY PRESSLER, South Dakota
ALAN J. DIXON, Illinois	MALCOLM WALLOP, Wyoming
DAVID L. BOREN, Oklahoma	CHRISTOPHER S. BOND, Missouri
TOM HARKIN, Iowa	CHARLES E. GRASSLEY, Iowa
JOHN F. KERRY, Massachusetts	TRENT LOTT, Mississippi
BARBARA A. MIKULSKI, Maryland	CONRAD BURNS, Montana
JOSEPH I. LIEBERMAN, Connecticut	TED STEVENS, Alaska

JOHN W. BALL III, *Staff Director and Chief Counsel*
WILLIAM B. MONTALTO, *Procurement Policy Counsel*
PETER COYLE, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON GOVERNMENT CONTRACTING AND PAPERWORK REDUCTION

ALAN J. DIXON, Illinois, *Chairman*

DAVID L. BOREN, Oklahoma	CHARLES E. GRASSLEY, Iowa
JOSEPH I. LIEBERMAN, Connecticut	ROBERT W. KASTEN, JR., Wisconsin

CONTENTS

	Page
Statement of Senators:	
Dixon, Hon. Alan J., a U.S. Senator from the State of Illinois	1
Boschwitz, Hon. Rudy, a U.S. Senator from the State of Minnesota	17
Kasten, Hon. Robert W., Jr., a U.S. Senator from the State of Wisconsin	85
Grassley, Hon. Charles E., a U.S. Senator from the State of Iowa	168
Statement of Representatives:	
Horton, Hon. Frank, a U.S. Representative from the State of New York	2
Sisisky, Hon. Norman, a U.S. Representative from the State of Virginia, Chairman, Subcommittee on Exports, Tax Policy, and Special Problems, House Small Business Committee, Washington, DC	19
Statement of:	
Acevedo, Elaine, director of Government affairs, Florists' Transworld Delivery Association, Washington, DC, representing the Small Business Legislative Council and National Small Business United	148
Burman, Allan V., Deputy Administrator and Acting Administrator, Office of Federal Procurement Policy, Office of Management and Budget, Washington, DC	42
Lauzen, Leo G., chairman, Comprehensive Accounting Corp., Aurora, IL	99
Norberg, Denise, Gust A. Norberg & Son, Inc., Chicago, IL, representing the American Subcontractors Association and the U.S. Chamber of Commerce	127
Plager, Hon. S. Jay, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC	26
Swain, Hon. Frank S., Chief Counsel for Advocacy, U.S. Small Business Administration, Washington, DC	59

APPENDIX

Statement of Sidney Spencer, on behalf of the Committee on Government Liaison Financial Executives Institute	173
Letter dated August 28, 1989, to Senator Dixon, from Albert D. Bourland, U.S. Chamber of Commerce, Washington, DC	203

HEARING DATE

September 7, 1989:	
Morning session	1

IMPLEMENTATION OF THE PAPERWORK REDUCTION ACT OF 1980

THURSDAY, SEPTEMBER 7, 1989

U.S. SENATE,
SUBCOMMITTEE ON GOVERNMENT CONTRACTING
AND PAPERWORK REDUCTION,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Subcommittee met at 9:30 a.m., in room 428–A, Russell Senate Office Building, Hon. Alan J. Dixon (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. ALAN J. DIXON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DIXON. Ladies and gentlemen, today the Small Business Committee will review the implementation of the Paperwork Reduction Act of 1980 from the perspective of the small business community. Enactment of the Paperwork Reduction Act was a key recommendation of the 1980 White House Conference on Small Business.

That recommendation became a reality through the leadership of former Senator Lawton Chiles, the assistance of Jack Danforth and Sam Nunn and Representatives Jack Brooks and Frank Horton.

Frank Horton, the ranking minority member of the House Committee on Government Operations, cannot be here this morning. He would have been our leadoff witness. He asked that his statement be placed in the record.

[The prepared statement of Representative Horton follows:]

Statement o fthe Honorable Frank Horton
before the Senate Subcommittee on Government
Contracting and Paperwork Reduction
Senate Small Business Committee

Good morning Mr. Chairman, and thank you for providing me with the opportunity to testify before the subcommittee today. Allow me to begin my remarks today by framing for you this picture. In late July a hearing of my Government Operations Committee broke for a brief period to allow us to vote. I left my chair, walked toward the door and then turned and looked back at the dais where Chairman Conyers and I had been conducting our business.

Paper everywhere. Paper on the chairs, paper on the floor, paper strewn from one end of the dais to the other. I laughed to myself as I thought of that sight and the subject of our hearing - the Paperwork Reduction Act.

That particular hearing was one of four our Legislation and National Security Subcommittee held on this law. I know that many of you who attended share my view that the hearings were long and sometimes tedious. The principle conclusion I drew from those four days was that Chairman Conyers and I have some fundamental differences with respect to this Act, to its history and to its future. This is not to say that I will not attempt to overcome these differences, for I will make such an attempt.

In fact, since the beginning of this reauthorization process I have directed my staff to make every effort in pursuit of a workable, responsible compromise. But let me emphasize the word "responsible." I want a compromise that preserves the basic integrity of the Act, one that makes improvements where improvements are warranted, and that retains the guts of the Act as well.

The Paperwork Reduction Act and Frank Horton go back quite a few years. I know everyone here is familiar with my work as Chairman of the Commission on Federal Paperwork. In 1977, this two-year, congressionally-mandated Commission concluded its work -- under budget I might add -- and made its recommendations.

Our central conclusion was this: the Federal government was strangling itself and the American public in a swelling sea of red-tape. We estimated in 1977 that the Federal paperwork burden on the American public was more than $100 billion annually.

To curb what I termed this "strangulation by regulation," we made a number of recommendations, 880 to be exact, in 16 individual reports, which together comprised a critical and comprehensive review and analysis of the Federal paperwork

burden. One might be amused that it took 880 recommendations and 16 reports to effectively analyze Federal paperwork. I should point out, however, that the number of recommendations breaks down to one recommendation for every $114 million in burden -- not a bad breakdown.

Perhaps the most important of the many paperwork clearance recommendations we made were two that stated "Congress should consolidate the clearance function in a single place and (2) agencies should assume more responsibility in "clearing" forms when they have sufficient expertise to do so and should operate under OMB guidance." These two recommendations provided the foundation of the Paperwork Reduction Act which created and gave authority to the Office of Information and Regulatory Affairs.

I was the principal sponsor of the Paperwork Reduction Act. Former Chairman Jack Brooks and I on the House side, and former Senator Lawton Chiles on the Senate side, worked many months to shape this law. We fought some hard battles, but we succeeded in achieving a workable, responsible bill that won the support of Democrats and Republicans, in the House and the Senate.

I was with President Carter in December, 1980 when he signed into law the Paperwork Reduction Act of 1980. I remember his words:

"The Act I'm signing today will not only regulate the regulators, but it will also allow the President, through the Office of Management and Budget, to gain better control over the Federal government's appetite for information from the public. For the first time, it allows OMB to have the final word on many of the regulations issued by our Government. It also ensures that the public need not fill out forms nor keep records, which are not previously approved by OMB."

I would like to return to the phrase I used a few minutes ago, "strangulation by regulation." Paperwork is the tool that implements regulations. It is from regulation that, to a significant degree, the massive paperwork burden eminates. The 1980 law set up a paperwork clearance process for paperwork contained in rules, and for that existing outside rules such as tax forms, Customs forms, simple questionnaires.

The Office of Information and Regulatory Affairs was established as the clearance center. President Reagan rightly recognized the relationship between paperwork and regulation, and executed his regulatory review orders through OIRA as well. For the first time, and as a result of the Paperwork Reduction Act, regulatory and paperwork reviews conducted by an Administration were centralized. Some, including myself, consider this an advantage. It provides a coordinating center to check on

duplication, review regulations with other affected agencies, and ensure that paperwork burdens have "practical utility." It provides a focal point for congressional oversight, allows for greater accountability and adds generally some good measures of efficiency and coordination to government operations.

Critics of the Act in 1980 are critical of the Act today. Fundamentally, they do not believe in the Executive's perrogative to review most paperwork and agency regulatory activities. They consider the agencies the experts. They believe OIRA has abused its authority. While I do not question the sincerity of these views, this is not the philosophy that prompted the Paperwork Reduction Act.

Let us spend a minute on the executive orders currently in question. Executive Order 12498 requires agencies to submit their projected regulatory plans for the coming year. These plans are reviewed by OIRA and then included in the comprehensive Reulatory Program of the United States. Executive Order 12291, on the other hand, is the tool by which OIRA reviews individual regulatory proposals to determine that the benefit of these regulations to society outweigh the cost. It is our belief that unless there is some objective standard for coordinating an uncontrolled bureaucracy, paperwork reduction will never really be effective.

The Paperwork Reduction Act did not address the issue of executive orders in 1980, nor did the Act's only reauthorization in 1986. The Act concentrated only on paperwork clearance, both inside and outside the rulemaking process. We did this purposely and for two reasons: first, no President of either party would sign a bill wherein Congress dictates internal Executive branch management policies. Second, at least from my view and the view of others who worked on the Act, we recognized executive review and coordination of regulatory policy as a legitimiate function of the Executive branch, so long as this review is within the limits of the law. It is the responsibility of Congress to oversee coordination of regulatory review activities through strong and regular oversight.

For these reasons, the executive order provisions do not belong in an OIRA reauthorization bill. I would like to add also that not a single policymaker in any agency has supported the assertions that OIRA has abused its power. They recognize the importance of an OIRA. In my opinion, any agreement on executive order policies should be worked out with the Administration for administrative, not legislative, implementation. Director Darman and OIRA Administrator Plager have expressed their commitment to improving the 1986 agreement in which the Administration resolved executive order differences with Congress administratively. Already, Mr. Darman and

Mr. Plager have agreed to invite any submitting agency information on all calls made outside the government involving the rule.

I should add that many of my strongest concerns with the discussion draft released by Chairman Conyers in July involved the provisions relating to the Executive orders. These provisions required extensive logging of all oral and written communications between the agencies, or between the agencies and OIRA. These requirements, together with the requirement for continual and premature disclosure of all such records to the public, even in the deliberative stages when different alternatives are being debated, would effectively grind government to a halt. And requiring mandatory public involvement in this Executive branch deliberative process -- another requirement -- is counter to practically every court decision rendered in this area.

This is not to say that OIRA is perfect, nor that the Act itself is perfect. Both can be improved. But I am saying that what should be fixed is only what is broken - and we should keep our eyes on the ball of paperwork clearance. This leads me to my proposal. I have tried to build on the progress we made in our 1986 reauthorization. My proposal increases agency and OIRA accountability, provides valuable tools for systematic

congressional oversight, ensures public input in the implementation of paperwork requirements before these requirements are submitted to OIRA, establishes a process to allow agency continuance of requirements beyond the current three year limit, continues the current prohibition against judicial review of paperwork clearances and retains the standards necessary for effective paperwork review.

Let us talk for a minute about "practical utility." In reviewing agency paperwork requests, OIRA must currently consider their "practical utility" to the proper performance of the mission of the agency. That rule works well. It is retained in my bill and is not expanded to include a public need that might exist either now or sometime in the future. No request could be seriously changed or disapproved with such an expanded standard.

I continue the judicial review prohibition as a matter of sound policy and government efficiency. Removal of this prohibition would potentially tangle any regulatory or paperwork activity in the courts for inordinate amounts of time.

Under my proposal, paperwork requirements contained in rules can, without a second OIRA review, continue beyond their current three year limit (I) if no changes in the requirements are made,

and (2) if public input is sought through the Federal Register and the public comments are considered. These continuances are subject to annual OIRA review and reversal. OIRA reversals, in turn, are subject to GAO and then congressional review.

OIRA disapprovals will be tracked more carefully under my proposal. I would require OIRA explanation of any disapproval to be reported to the responsible agency head and to the Comptroller General. Such explanations must include a thorough discussion of why the request lacked practical utility and why it was not essential to the proper performance of the mission of the submitting agency. GAO would then submit a compilation of all disapprovals, on a quarterly basis, to the appropriate Committees of Congress (House Government Operations and Senate Governmental Affairs).

I identify in my proposal the areas of greatest burden on the public, principally taxation, small business, state and local government, and procurement, and I would direct the OMB Director to concentrate OIRA's resources in these areas. GAO would then be required to report to the Congress on OMB compliance with this direction.

Finally, both the Conyers draft and the Senate draft contain provisions on the broad issue of information dissemination

policy. Such a section is excluded from my bill. It is excluded not because I consider the issue unimportant, but rather, because negotiations involving all interested parties are now underway. A section with the support of all affected interests is the goal. I am participating in those negotiations and will include, in my final draft, language that is agreed to and that makes sense. I considered it premature to include such language at this time.

I have brought with me copies of my proposal and side-by-side analysis for your review. If my proposal makes sense to you, I will appreciate your strong support. The organizations represented here today are powerful. You have great influence. In visits to the Hill, in correspondence to Members, in meetings with your membership, I hope you will talk this issue up. I know many of you have worked extensively with my staff. I appreciate your time and your input. I look forward to working with you on ensuring a strong and effective reauthorization of the Paperwork Reduction Act. I will promise you this: I will not support any proposal that fails to keep in place the fundamental principles that have made OIRA the effective coordinating arm it is today.

Thank you. If you have any questions I would be glad to answer them.

Senator DIXON. There is little disagreement that left unchecked the Federal Government's appetite for information collection and regulations is virtually insatiable. To every program manager, each new regulation appears perfectly reasonable, only minimally burdensome, and probably close to essential for the effective administration of the program. As we shall hear, these same regulations and information requests don't always look quite so reasonable when you are on the receiving end. The paperwork burdens on the public before the act were staggering, and in many ways they still remain so. Without the protections provided by the Paperwork Reduction Act, the situation would be much worse.

As we authorized in 1985, the act requires the Government to annually reduce its paperwork burden on the public by 5 percent. Implementation of the act also requires each agency to submit a paperwork budget estimating the number of paperwork burden hours it is imposing. Finally, the act created the Office of Information and Regulatory Affairs (OIRA), within OMB as a focal point for its implementation.

To further discipline the agency's information collection activities, the act requires each agency to provide an opportunity for public comment on any proposal. It must also obtain OIRA's approval. Without OIRA's approval of an agency information collection request manifested by an OMB control number, a member of the public is free to ignore the request.

OIRA's current authorization expires at the end of this month, and the Committee on Governmental Affairs and its Subcommittee on Government Information and Regulation is now considering OIRA's future. As the Committee did before the 1985 reauthorization, our hearing record will be transmitted to the committee of jurisdiction to aid them in their deliberations.

Today's testimony conveys that the small business community remains strongly committed to the Paperwork Reduction Act and to OIRA. Together with sustained congressional oversight, the act and OIRA seem to afford the best hope for some effective restraint on the Government's natural propensities to impose paperwork burdens and regulations on the public.

I, of course, look forward to today's witnesses from the Congress, the Administration, and most importantly the small business community. And I ask that a statement by the distinguished Senator from Minnesota, Senator Rudy Boschwitz, be placed in the record.

[The prepared statements of Senators Dixon and Boschwitz follow:]

STATEMENT of SENATOR ALAN J. DIXON

Hearing on
Implementation of the Paperwork Reduction Act of 1980:
Protections for Small Business Government Contractors

Subcommittee on Government Contracting and Paperwork Reductior
Committee on Small Business

September 7, 1989

Today, the Small Business Committee will review the implementation of the Paperwork Reduction Act of 1980 from the perspective of the small business community, especially small business government contractors. Enactment of the Paperwork Reduction Act was a key recommendation of the 1980 White House Conference on Small Business.

That recommendation of the small business community became a reality through the leadership of former Senator Lawton Chiles of Florida, with the assistance of Senators Jack Danforth and Sam Nunn, and Representatives Jack Brooks and Frank Horton. Frank Horton, the Ranking Minority Member of the House Committee on Government Operations, will be our lead-off witness this morning.

There is little disagreement that left unchecked the Federal Government's appetite for information collection and regulations is virtually insatiable. To every program manager, each new regulation or reporting requirement appears perfectly reasonable, only minimally burdensome, and probably close to essential for the effective administration of the public good which that public servant is conscientiously attempting to foster. As we shall hear, these same regulations and information requests don't

always look quite so reasonable when you are on the receiving end of the torrent. The paperwork burdens on the public before the Act were staggering, and in many ways they remain so. But the situation would have been substantially worse without the public protections provided by the Paperwork Reduction Act.

As reauthorized in 1985, the Act mandates that the Government annually reduce by 5 percent its paperwork burden on the public. To more effectively bring home the costs associated with the paperwork burden, implementation of the Act takes the novel approach of requiring each agency to submit a "paperwork budget", estimating the number of "paperwork burden hours" it is imposing. This information collection budget is then managed much like the agency's funding budget. Expansions in the agency's paperwork burdens in one area are generally to be met with reductions in other areas, but the authority for "supplemental appropriations" to meet new requirements is provided.

The Act also created the Office of Information and Regulatory Affairs (OIRA). Placed within OMB, OIRA is the focalpoint for the implementation of the Act's paperwork reduction objectives, as well as the underlying Federal policies regarding collection and dissemination of the vast amounts of information collected by the various agencies of Government.

To further discipline the agencies' information collection activities, the Act requires each agency to provide an

opportunity for public comment on any proposal. It must also obtain OIRA's approval. Without OIRA's approval of an agency information collection request, manifested by an OMB Control Number, a member of the public is free to ignore the request.

Some assert that this approval authority, in the name of protecting the public from unwarranted paperwork burdens, has been abused. Specifically, OIRA's critics urge that it has been used by OMB to block agency regulatory actions with which OMB disagreed as a matter of policy. Irrespective of the validity of those assertions, or the frequency of the occurrences, it seems clear that many in the small business community strongly believe that an effective restraint on the unnecessarily burdensome and ineffective implementation of admittedly good public policies is equally important for the overall well-being of the Nation. Further, as we will hear today, many in the small business community would urge that OIRA hasn't been tough enough on the agencies and its authorities should be expanded, not curtailed.

OIRA's current authorization expires as the end of this month. The Committee on Governmental Affairs, and its Subcommittee on Government Information and Regulation, is now considering OIRA's future. As this Committee did before the 1985 reauthorization, which was strongly supported by the small business community, the results of this hearing will be transmitted to the Committee of jurisdiction to assist them in their deliberations.

Whatever the specific outcome of those deliberations, I think today's testimony will convey that the small business community remains strongly committed to the Paperwork Reduction Act and to OIRA. Together with sustained Congressional oversight, that legislation and that office seem to afford the best hope for some effective restraint on the Government's natural propensities to impose paperwork burdens and regulations on the public.

I look forward to today's witnesses from the Congress, the Administration, and most importantly the small business community.

STATEMENT OF SENATOR RUDY BOSCHWITZ
BEFORE THE GOVERNMENT CONTRACTING AND PAPERWORK
REDUCTION SUBCOMMITTEE
SENATE SMALL BUSINESS COMMITTEE
SEPTEMBER 7, 1989

MR. CHAIRMAN, I WANT TO COMMEND YOU AND SENATOR GRASSLEY FOR CONDUCTING THIS HEARING ON IMPLEMENTATION OF THE PAPERWORK REDUCTION ACT OF 1980 (PRA) AND THE STATUS OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS (OIRA). I WOULD ALSO LIKE TO WELCOME OUR DISTINGUISHED PANEL OF WITNESSES REPRESENTING THE FEDERAL GOVERNMENT AND THE SMALL BUSINESS COMMUNITY. I AM ANXIOUS TO HEAR THEIR VIEWS.

OIRA WAS CREATED BY THE PAPERWORK REDUCTION ACT TO REVIEW THE PAPERWORK BURDENS OF PROPOSED AGENCY REGULATIONS. IT IS AN AGENCY WITHIN THE JURISDICTION OF THE OFFICE OF MANAGEMENT & BUDGET. OIRA MAINTAINS AN INVENTORY OF FEDERAL PAPERWORK AND IT ALLOTS A PAPERWORK ALLOWANCE TO EACH DEPARTMENT OR AGENCY ANNUALLY. ANY NEW GOVERNMENT FORM MUST BE APPROVED BY OIRA AND THEN IT IS ASSIGNED AN OMB CONTROL NUMBER. IT IS BELIEVED BY THE VAST MAJORITY OF THE SMALL BUSINESS COMMUNITY THAT PRA AND OIRA HAVE REDUCED GOVERNMENT PAPERWORK; HOWEVER, OPPONENTS OF OIRA ARE AGAINST THE REGULATORY REVIEWS FUNCTIONS THEY PERFORM.

THERE IS CURRENTLY A REQUEST BEFORE THE SUBCOMMITTEE ON TREASURY - POSTAL SERVICE AND GENERAL GOVERNMENT OF THE HOUSE APPROPRIATIONS COMMITTEE TO GIVE NO FUNDS TO OIRA UNLESS THEY ARE REAUTHORIZED. THEIR AUTHORIZATION EXPIRES AT THE END OF FY89, AND THERE IS A PROPOSAL BEFORE THE HOUSE GOVERNMENT OPERATIONS COMMITTEE NOT TO REAUTHORIZE OIRA. I AM HOPEFUL OUR HEARING TODAY WILL ASSIST THE AUTHORIZING COMMITTEES OF BOTH THE HOUSE AND SENATE TO MAKE THEIR DETERMINATIONS OF WHETHER OR NOT TO REAUTHORIZE OIRA.

I LOOK FORWARD TO THE TESTIMONY PROVIDED BY THE WITNESSES THIS MORNING.

THANK YOU, MR. CHAIRMAN.

Senator DIXON. Now, ladies and gentlemen, it is my pleasure to recognize the Honorable Norman Sisisky, the Chairman of the House Small Business Committee's Subcommittee on Exports, Tax Policy and Special Problems from the U.S. House of Representatives. Norman, I'm delighted to see you here, and thank you for honoring us with your presence.

STATEMENT OF HON. NORMAN SISISKY, A U.S. REPRESENTATIVE FROM THE STATE OF VIRGINIA, CHAIRMAN, SUBCOMMITTEE ON EXPORTS, TAX POLICY, AND SPECIAL PROBLEMS, HOUSE SMALL BUSINESS COMMITTEE, WASHINGTON, DC

Representative SISISKY. Thank you very much, Chairman Dixon, for this opportunity to address your Subcommittee on the reauthorization of the Paperwork Reduction Act. As you stated, I am Chairman of the House Small Business Subcommittee on Exports and Tax Policy and special problems—which gives me a lot of range to do a lot of things.

As you have already basically said, small businesses are particularly hamstrung by Government paperwork. One must remember that 83 percent of all companies in this country have 20 or fewer employees. Government paperwork really does represent a significant burden for these companies.

Endless requests for documents, records, information, and the associated cost of fulfilling such requests can cripple a small enterprise. Demands are often made of small businesses that few Members of Congress would endure.

My Subcommittee is concerned about how Government paperwork affects small business. We held a hearing last September on the unfortunate effect that one particular paperwork requirement, the Hazard Communication Standard, is having on small business. And I think what we learned in that hearing will be of use to this Subcommittee as it considers the reauthorization of the Paperwork Reduction Act.

Let me take a moment to summarize what my Subcommittee learned. The Hazard Communication Standard, as you may know, regulates how employers and employees handle hazardous chemicals in order to limit health and safety risks. There are approximately 575,000 different chemical products used in American business today and many can cause serious illness or injury when improperly used. Under the standard, all potential hazards associated with a chemical must be communicated to employees through container labeling, the Material Safety Data Sheets (MSDSs), and employee training.

In the real world, businesses complying with the Hazard Communication Standard face staggering problems. For example, my Subcommittee heard from a pharmaceutical distributor who must maintain—and by the way, Senator Dixon, as I recall, this distributor is from Illinois—1,500 to 2,000 MSDSs on file to meet the requirements of the standard. They further testified that to comply they will have to spend some $16 million each year to send out 10 million MSDSs to their 1,000 customers.

And we also heard from a flower grower who had to hire an additional full-time employee just to maintain the files caused by the standard.

Now, I want to make it clear that I do not oppose the Hazard Communication Standard, nor might I add do the businesses, trade representatives, and labor organizations that testified before my Subcommittee. Everyone—and I must emphasize this—agrees that informing employees of potential workplace hazards is a matter of paramount importance.

However, the mountain of paperwork required by OSHA to implement the standard is burying this goal. In fact, it looks to me as if OSHA created a complex, expensive, and unruly system where the paperwork requirements are the principal priority and protecting worker safety is an afterthought.

Further, many American small businesses cannot afford the added expense of complying with this standard. The situation reminds me of the soldier who argues that a village has to be destroyed to be saved. Mr. Chairman, I think we must be careful to avoid destroying the village in an effort to save the villagers.

Now, OMB estimates that the Hazard Communication Standard is the sixth greatest paperwork-intensive requirement ever developed. Testimony before my Subcommittee revealed that the Material Safety Data Sheets that make up the bulk of the paperwork burden did not accomplish what they were intended to accomplish. And even the AFL-CIO expressed to my Subcommittee its concern that the standard placed too much of the burden of worker education on regulated businesses.

In other words, Mr. Chairman, a massive administrative burden is being placed on the backs of small businesses while the end sought by the regulation may not be achieved. My Subcommittee, working with Senator Bumpers now, is now seeking to verify the impact of these regulations through a General Accounting Office study.

The original Paperwork Reduction Act, for all of its flaws, is one of the few tools created by Congress to help small business in the battle against unrealistic paperwork requirements. Without this tool, I feel that the painful experiences of the small business community with the Hazard Communication Standard will be repeated.

I think we in Congress must be concerned with the cost to society of gathering irrelevant or redundant information. If we are to build and sustain a strong economy, then resources must be directed toward building new jobs, creating new products, and expanding production capabilities rather than paying for Government record-keeping.

Recently the goal of the Paperwork Reduction Act was placed in jeopardy as a result of a court challenge to the Hazard Communication Standard. A Federal appeal court ruling now under appeal before the Supreme Court undercuts the Office of Information and Regulatory Affairs', OIRA's, ability to limit the paperwork required by the Hazard Communication Standard. In short, the system intended by Congress to protect both the public and small business from over-zealous bureaucrats and redundant paperwork is now in danger of becoming a paper tiger.

Now, several amendments to the act proposed in the House version of the reauthorization bill contain laudable changes that can both ensure better public access to Government information and shed more light on the decisionmaking process at OIRA. However, Congress should first and foremost remember that the Paperwork Reduction Act was designed to reduce the paperwork burden on the public.

Sadly, it seems that we have lost sight of this goal. Consider, for example, the fact that chemicals currently covered under the Hazard Communication Standard are also subject to the Consumer Product Safety Act and the Federal Hazardous Substance Act. The demands made on small businesses attempting to meet these three standards are all different. How can American business reasonably be expected to meet three very different and possibly conflicting requirements?

Mr. Chairman, it is possible to request so much information from a small business that it simply cannot digest or respond to the requirements. Without the protection of the Paperwork Reduction Act, examples like the one just cited are likely to proliferate.

Former Senator Lawton Chiles, as you mentioned earlier, underscored the importance of the Paperwork Reduction Act during the 1986 reauthorization debate and he said—and I quote—"A fundamental premise of the Paperwork Reduction Act is that every citizen is entitled to have their Government check the need for information requests made of them. Duplication of unnecessarily burdensome requests should be avoided."

These words are as true today as they were just 3 years ago.

Unfortunately, some in Congress are seeking to rewrite the act in order to reduce the work of the bureaucrats rather than ease the paperwork burden on the public.

Mr. Chairman, the Paperwork Reduction Act—and I repeat this again—was designed to check the worst bureaucratic impulses of Government. And while Congress must be mindful of use of the political uses—and I think this is an important point—of the Paperwork Reduction Act, OIRA's ability to review and revise paperwork requirements should not be—should not be—unduly restricted. Where effective congressional oversight exists, the potential political manipulation of OIRA will disappear.

When it works well, the Paperwork Reduction Act balances the competing interests of the public's right to information and the business community's need to operate as free from Government intrusion as possible. The end goal of this reauthorization effort should be the same.

Further, Congress should seriously consider enlarging and making permanent the mandate to Federal agencies to minimize information and recordkeeping requirements to the public.

Thank you again, Mr. Chairman, for allowing me to address this Subcommittee, and I look forward to working with you and the Members of this Subcommittee as you examine the important questions before you.

[The prepared statement of Representative Sisisky follows:]

MAJORITY MEMBERS
NORMAN SISISKY, VIRGINIA
CHAIRMAN
RICHARD RAY, GEORGIA
PETER HOAGLAND, NEBRASKA
ROSARIO L. MAZZOLI, KENTUCKY
H. MARTIN LANCASTER, NORTH CAROLINA
MICHAEL R. MCNULTY, NEW YORK
JAMES H. BILBRAY, NEVADA

MINORITY MEMBERS
JERRY EBLAND, FLORIDA
D. FRENCH SLAUGHTER, JR., VIRGINIA
JAN MEYERS, KANSAS
JOHN J. RHODES III, ARIZONA

DIANE WORTHINGTON
SUBCOMMITTEE STAFF DIRECTOR
202-225-5944

STEPHEN P. LYNCH
MINORITY
PROFESSIONAL STAFF MEMBER
202-226-3420

101st Congress

United States House of Representatives

Committee on Small Business

Subcommittee on Exports, Tax Policy, and Special Problems

B-363 Rayburn House Office Building

Washington, DC 20515

STATEMENT OF HONORABLE NORMAN SISISKY, CHAIRMAN, HOUSE SMALL BUSINESS SUBCOMMITTEE ON EXPORTS, TAX POLICY AND SPECIAL PROBLEMS, BEFORE THE SENATE SMALL BUSINESS SUBCOMMITTEE ON GOVERNMENT CONTRACTS AND PAPERWORK REDUCTION

SEPTEMBER 7, 1989

Thank you Chairman Dixon for this opportunity to address your Subcommittee on the re-authorization of the Paperwork Reduction Act. I am Norman Sisisky and I Chair the House Small Business Subcommittee on Exports, Tax Policy and Special Problems.

Small Businesses are particularly hamstrung by government paperwork. One must remember that 83% of all companies in this country have 20 or fewer employees. Government paperwork really does represent a significant burden for these companies.

Endless requests for documents, records, information and the associated costs of fulfilling such requests can cripple a small enterprise. Demands are often made of small businesses that few members of Congress would endure.

My Subcommittee is concerned about how government paperwork affects small business. We held a hearing last September on the unfortunate effect that one particular paperwork requirement, the Hazard Communication Standard, is having on small business. I think what we learned in that hearing will be of use to this Subcommittee as it considers the re-authorization of the Paperwork Reduction Act. I have submitted a copy of the transcript of our hearing, along with my remarks this morning.

Let me take a moment to summarize what my Subcommittee learned. The Hazard Communication Standard, as you may know, regulates how employers and employees handle hazardous chemicals in order to limit health and safety risks. There are approximately 575,000 different chemical products used in American business today, and many can cause serious illness or injury when improperly used.

Under the standard, all potential hazards associated with a chemical must be communicated to employees through container labeling, Material Safety Data Sheets (MSDS's) and employee training.

In the real world, businesses complying with the Hazard Communication Standard face staggering problems. For example, my Subcommittee heard from a pharmaceutical distributor who must maintain 1,500 to 2,000 MSDS's on file to meet the requirements of the standard. They further testified that to comply they will have to spend some $16 million dollars each year to send out 10 million MSDS's to their 1,000 customers.

We also heard from a flower grower who had to hire an additional full time employee just to maintain the files caused by the standard.

Now, I want to make it clear that I do not oppose the Hazard Communication Standard, nor, I might add, do the businesses trade representatives and labor organizations that testified before my Subcommittee. Everyone, and I must emphasize this everyone agrees that informing employees of potential work place hazards is a matter of paramount importance.

However, the mountain of paperwork required by OSHA to implement the standard is burying this goal. In fact, it looks to me as if OSHA created a complex, expensive and unruly system where the paperwork requirements are the principal priority and protecting worker safety is an afterthought.

Further, many American small businesses cannot afford the added expense of complying with this standard. The situation reminds me of the soldier who argues that a village has to be destroyed to be saved. Mr. Chairman, we must be careful to avoid destroying the village in the effort to save the villagers.

OMB estimates that the Hazard Communication Standard is the 6th greatest paperwork intensive requirement ever developed. Testimony before my Subcommittee revealed that the Material Safety Data Sheets that make up the bulk of the paperwork burden do not accomplish what they were intended to accomplish. And even the AFL-CIO expressed to my Subcommittee it's concern that the Standard placed too much of the burden of worker education on regulated businesses.

In other words, Mr. Chairman, a massive administrative burden is being placed on the backs of small businesses while the end sought by the regulations may not be achieved. My Subcommittee, working with Senator Bumpers, is now seeking to verify the impact of these regulations through a General Accounting Office study.

The original Paperwork Reduction Act, for all its flaws, is one of the few tools created by Congress to help small business in the battle against unrealistic paperwork requirements. Without this tool, I fear that the painful experiences of the small business community with the Hazard Communication Standard will be repeated.

We in Congress must be concerned with the cost to society of gathering irrelevant or redundant information. If we are to build and sustain a strong economy, then resources must be directed toward building new jobs, creating new products, and expanding production capabilities rather than paying for government record keeping.

Recently, the goal of the Paperwork Reduction Act was placed in jeopardy as a result of a court challenge to the Hazard Communication Standard. A Federal Appeal Court ruling, now under appeal before the Supreme Court, undercuts the Office of Information and Regulatory Affairs' (OIRA) ability to limit the paperwork required by the Hazard Communication Standard. In short, the system intended by Congress to protect both the public and small business from over-zealous bureaucrats and redundant paperwork is now in danger of becoming a paper tiger.

Several amendments to the Act proposed in the House version of the re-authorization bill contain laudable changes that can both ensure better public access to government information and shed more light on the decision making process at OIRA. However, Congress should first and foremost remember that the Paperwork Reduction Act was designed to reduce the paperwork burden on the public.

Sadly, it seems that we've lost sight of this goal. Consider, for example, the fact that chemicals currently covered under the Hazard Communication Standard are also subject to the Consumer Product Safety Act and the Federal Hazardous Substance Act. The demands made on small businesses attempting to meet these 3 standards are all different. How can American business reasonably be expected to meet 3 very different and possibly conflicting requirements?

Mr. Chairman, it is possible to request so much information from a small business that it simply cannot digest or respond to the requirements. Without the protection of the Paperwork Reduction Act, examples like the one just cited are likely to proliferate.

Former Senator Lawton Chiles underscored the importance of the Paperwork Reduction Act during the 1986 re-authorization debate. He said:

> "A fundamental premise of the Paperwork Reduction Act is that every citizen is entitled to have their Government check the need for information requests made of them. Duplicative or unnecessarily burdensome requests should be avoided".

These words are as true today as whey were (3) three years ago.

Unfortunately, some in Congress are seeking to re-write the Act in order to reduce the work of bureaucrats rather than ease the paperwork burden on the public.

Mr. Chairman, the Paperwork Reduction Act was designed to check the worst bureaucratic impulses of government. While Congress must be mindful of use of the political uses of Paperwork Reduction Act, OIRA's ability to review and revise paperwork requirements should not be unduly restricted. Where effective Congressional oversight exists, the potential political manipulation of OIRA will disappear.

When it works well, the Paperwork Reduction Act balances the competing interests of the public's right to information and the business community's need to operate as free from government intrusion as possible. The end goal of this re-authorization effort should be the same. Further, Congress should seriously consider enlarging and making permanent the mandate to federal agencies to minimize information and record keeping requirements to the public.

Thank you again, Mr. Chairman, for allowing me to address this Subcommittee. I look forward to working with you and the members of this Subcommittee as you examine the important questions before you.

Senator DIXON. Thank you very much, Mr. Chairman, for your very useful and important contribution to this hearing.

If I might ask you just one question for the record. We are hearing on this side some rumors that some in the House are suggesting that the Government Paperwork Reduction Act has been used from time to time to adversely affect the impact of important social programs. Have you any evidence to that effect?

Representative SISISKY. I haven't any evidence. I've heard the same and that's why I stressed the importance of congressional oversight. I think we can control any excessive political zeal on the part of OMB. There have been instances, as I understand it, but I'm not familiar with them.

Senator DIXON. Yes.

Representative SISISKY. And we must have the oversight to control potential manipulation of the process.

Senator DIXON. Well, I must say I have personally no information to that effect, and I thought quite possibly that you as Chairman of your Subcommittee might have some. I'm delighted to hear you have no specific cases that you know of.

Representative SISISKY. No, I do not.

Senator DIXON. I want to thank you very much for coming over here this morning. I know you have a busy schedule in the House. We appreciate it.

Representative SISISKY. Thank you very much.

Senator DIXON. Ladies and gentlemen, as I said previously, the Honorable Frank Horton, ranking minority member of the Committee on Government Operations, has placed a statement on the record.

We appreciated hearing from the Honorable Norman Sisisky, Chairman of the House Small Business Committee's Subcommittee on Exports, Tax Policy, and Special Problems.

Now, our second panel includes the Honorable S. Jay Plager, Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget; Dr. Allan V. Burman, Deputy Administrator and Acting Administrator, Office of the Federal Procurement Policy, Office of Management and Budget; and the Honorable Frank S. Swain, Chief Counsel, Office of Advocacy of the Small Business Administration. Would those three be kind enough to come up to the table? Thank you, gentlemen.

Now, Mr. Plager, do you have any objection to going first? Apparently, that's the way this thing is set up in my file.

Mr. PLAGER. I would be honored, Mr. Chairman.

Senator DIXON. Well, I appreciate that. And your full statements will all be reproduced in the record.

STATEMENT OF HON. S. JAY PLAGER, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC

Mr. PLAGER. We are pleased to be here today to discuss the activities of the Office of Information and Regulatory Affairs, particularly with respect to reducing Federal paperwork and regulatory burdens on small businesses. As you noted, we have submitted a formal statement for the record, and if I might, I'd like to just

highlight a few points for the record that I think would be of interest and hopefully value to this Subcommittee.

Senator DIXON. Thank you. May I tell you, Mr. Plager, that I've read your very fine statement, and we will reproduce it in full in the record.

Mr. PLAGER. Thank you, sir.

Under the authority of the Paperwork Reduction Act, I think we have come a long way in simplifying and reducing burdens in Federal paperwork for small businesses. We understand better, although not yet well enough, the magnitude of the paperwork burden imposed by Federal data collection efforts, tax forms, regulatory recordkeeping and reporting, and procurement processes. We've taken action in many specific cases to reduce these burdens for small businesses.

But there is a lot more work to be done. Small businesses are not saying to us or to you that they have seen relief. They are actually telling us the opposite. Paperwork continues to be overwhelming. This comes as no surprise to either of us.

We heard the same story a month ago in hearings before the House Government Operations Committee on the reauthorization of the Paperwork Reduction Act and, in fact, the need to continue to reduce paperwork burdens for small businesses was one of the few issues on which everyone seemed to be in agreement.

I've included in my written statement to you a letter from a small businessman in Pennsylvania which I think makes a terribly important point. He noted that the latest form that he got to fill out took him a couple of hours to fill out, which on its face is not unreasonable. But he then goes on to point out 30-some other recordkeeping and reporting requirements from both the Federal and State governments to which he is subjected, and he concludes by saying you can see that if our management was not burdened with such paperwork, our company would be more efficient, more profitable, and more of a benefit to our community and the economy of Pennsylvania. It's probably true in Illinois as well, sir.

This small businessowner points to an important but often overlooked reality. It's the cumulative impact of many otherwise individually reasonable paperwork requirements that become so unreasonable. That is why oversight is so important and why the Paperwork Reduction Act is so important in establishing OIRA as a central review and coordinating agency helping to control paperwork.

The act also allows us to support the oversight activities of the Office of Federal Procurement Policy in reducing Federal procurement paperwork and to support the activities of the Small Business Administration under the Regulatory Flexibility Act. I'm pleased to say that we work closely together, the three of us. We have excellent cooperation, and in OIRA we rely heavily on the expertise of our colleagues to ensure that collectively we are controlling the paperwork burden on small businesses. Both of these agencies are here, as you noted, to testify today on how the Paperwork Act helps them.

Let me mention, Mr. Chairman, two special problems facing small businesses with regard to paperwork and regulatory burdens. First, these burdens tend to fall disproportionately on small busi-

nesses and, second, small businesses have a harder time making their voices heard in Washington.

With regard to my first point, small businesses appear to be more sensitive to Federal paperwork and regulatory costs. A study funded by the Small Business Administration in 1984 found that the cost of Federal regulatory and paperwork burdens were three times higher per employee for small businesses than for large small businesses. This makes sense because paperwork and regulations have fixed cost components regardless of how many employees are in the firm.

A 1987 survey through Price Waterhouse suggests the same result.

I think these studies support what we all believe. There is good reason to look carefully at the special problems of small businesses before Federal agencies impose paperwork and regulatory costs on them.

That problem is aggravated by my second point which is that small businesses are typically underrepresented in the public comment that we and agencies use to make paperwork and regulatory decisions. Small businesses may not be able to hire professionals to track the Federal Register and to ensure that their views are represented in the record. They have a harder time participating in the established processes. The result is that we usually know less about the problems of small businesses than we do about large businesses, and it is easy for Federal agencies to assume that because small businesses don't complain, there are no problems.

Hearings like this and other work that your excellent subcommittee has done are major contributors to helping to correct this problem. It's a problem that makes it all the more important that we be vigilant about the needs of small businesses.

Although for many the paperwork problem may seem no smaller today than it did 8 years ago, we have in fact eliminated enormous paperwork burdens. Since 1981 implementation of the Paperwork Reduction Act by agencies and with the help of OMB has reduced by 500 million hours the amount of time that Americans would have spent filling out Government paperwork. This means that in 1989 we estimate the total paperwork burden on the American public will be about 1.8 billion hours. Without the savings I mentioned, the burden would have been over 2.3 billion hours. Assuming it costs about $20 an hour for competent recordkeeping, which I suspect is a quite conservative figure, this represents a saving to the American economy of over $10 billion a year.

Many of these reductions directly benefit small businesses. There are a number of cases that I would be glad to comment upon this morning in addition to the Hazard Communication Case which I'm sure you may want to ask questions about and I believe my colleagues will have comments about. Let me just mention one or two for the record because I think they're important.

Internal Revenue Service paperwork requirements are among the most burdensome for small business. I want to commend the IRS for its efforts to reduce and simplify tax-related paperwork. For example, the IRS earlier this year became the first Federal agency to hold town meetings with the public as an open forum for

public opinion on tax forms. We have helped them with two specific reductions, for example, in IRS paperwork.

Pension reporting is a complex and onerous task for many small businesses. In 1988, the IRS agreed, following discussions with OIRA, to eliminate for single-person employers the filing requirement to prove tax-exempt status. This action alone freed 300,000 small employers from this requirement and reduced their annual paperwork burden by over 200,000 hours.

There is another case in which there were tax return requirements imposed on loggers, and again, working with the IRS, we were able to eliminate a substantial, unnecessary requirement for small loggers and owners of small woodlots.

With regard to the Department of Defense, in 1985 and again in 1986, we disapproved a proposed information collection concerning the certification of commercial pricing that would have imposed large paperwork burdens on small businesses in particular.

We recognize that the Federal procurement process often places such large paperwork burdens on small business that it can become prohibitive for these firms to do business with the Federal Government. Many Defense Department regulations affect small businesses through the subcontracting that is usually involved in a large defense procurement. To further assist us in identifying these effects early in the rulemaking process, this fall we will, for the first time, include Department of Defense rulemakings in the Unified Agenda of Federal Regulations, which we publish twice a year. This will provide the public and the Congress, as well as OIRA, OFPP, and SBA with more information about the procurement paperwork burden affecting small businesses.

OIRA continues to examine ways to reduce the difficulty that smaller businesses face in complying with EPA's right-to-know reports. By making these reports easier, I believe we can reduce the burden on small businesses and get more accurate information.

For instance, last February OIRA requested public comment on allowing some or all owners of underground storage tanks to use an existing EPA form in lieu of a new community right-to-know form for reporting the existence and inventory of these tanks. We have received over 80 comments on this proposal which we are currently reviewing with EPA. It may sound like a small item to some people, but if adopted, this proposal would reduce the paperwork burdens on small businesses by perhaps as much as 600,000 hours each year.

We are also concerned, Mr. Chairman, about violations of the Paperwork Act, that is, what we call bootleg paperwork requirements. Last year small businesses brought to our attention two—it happened to be EPA—surveys that had not received Paperwork Act review, but that were very burdensome. We discussed these with EPA, and EPA ultimately decided that these collections were not warranted and recalled them.

Indeed, there has been some progress, but the job is far from over. Sometimes it seems that we are fighting a holding action pushing back paperwork in one area while it balloons in another. New programs usually mean new paperwork added to the paperwork of existing programs. In the past few years, we have seen large, new paperwork burdens mandated by statute, including im-

migration reform, tax reform, and Superfund amendments. The recent concerns about possible fraud and waste in Federal grants and contracts will also pressure agencies and the Congress to require more recordkeeping and reporting. Closer attention by the Congress to the paperwork requirements, working with the Administration in consideration of new statutes, would be of enormous assistance in reducing overall paperwork burdens.

Let me conclude my remarks, Mr. Chairman, by noting that the message that we and the Congress have been getting loudly and clearly is that more attention should be given to small business paperwork. We intend to do that. I must say that some of the revisions to the act being discussed in the House as part of the reauthorization of OIRA, such as exempting OSHA's Hazard Communication Standard from the Paperwork Reduction Act, would dramatically impair our ability to address the paperwork problems of small businesses.

We do not expect that everyone will agree with 100 percent of our decisions. Since I have been administrator, Mr. Chairman, I can personally attest to the fact that OIRA and OMB have gone about their efforts in controlling paperwork in an honest, open, and fair way. As Congressman Sisisky stated, any revision to the act should be examined carefully in light of the need to do more to control paperwork and not less.

I certainly appreciate the role that this Subcommittee has played in supporting the Paperwork Reduction Act and activities related to small businesses. We would appreciate your views or any suggestions on improving our efforts on behalf of small business. At the appropriate point, I'll be happy to answer any questions you may have, sir.

[The prepared statement of Mr. Plager follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

STATEMENT
OF
S. JAY PLAGER
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE SUBCOMMITTEE ON
GOVERNMENT CONTRACTING AND PAPERWORK REDUCTION
COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
SEPTEMBER 7, 1989

Mr. Chairman, I am pleased to be here today to discuss the activities of the Office of Information and Regulatory Affairs with respect to reducing Federal paperwork and regulatory burdens on small businesses. Ten years ago, a subcommittee of the Senate Select Committee on Small Business convened a hearing to discuss Federal paperwork burdens. At that hearing, Chairman Culver stated: "There is no doubt that the small business community bears a disproportionate share of the burden . . . the American people and American business and Congress are demanding a change . . . ." Congress' tool for change was enacted a year later as the Paperwork Reduction Act of 1980.

Under the authority of the Paperwork Reduction Act, we have come a long way since those hearings in simplifying and reducing burdensome Federal paperwork for small businesses. We understand better, although not yet well enough, the magnitude of the paperwork burden imposed by Federal data collection efforts, tax forms, regulatory recordkeeping and reporting, and procurement processes. We have taken action in many specific cases to reduce these burdens for small businesses.

But there is a lot more work to be done. Small businesses are not telling us that they have seen relief; they are telling us exactly the opposite. Paperwork continues to be overwhelming. This comes as no surprise to you, since you have heard this time and again in hearings before this committee. We heard the same story a month ago in hearings before the House Government Operations Committee on the reauthorization of the Paperwork Reduction Act. In fact, the need to continue to reduce paperwork burdens for small businesses was one of the few issues on which everyone agreed.

Two months ago we received a letter from a manager in a

small sheet metal business in Pennsylvania. I would like to submit this letter for the record. This businessman wrote to us in response to a statement, required by OIRA for all Federal forms, on a Labor Department form that disclosed the estimated time needed to supply the information and asked that comments be sent to OIRA. This businessman said that he spent about two hours putting together the requested information. Let me quote:

> This would not seem unreasonable to ask of the management of a small business considering the envisioned benefit to the planners of vocational training . . . (but) consider the Department of Labor as the English teacher who gives a reasonable one hour of homework to his students who have just been required to do one hour of math, one hour of history, one hour of science, and one hour of health homework.

The letter goes on to list 30 other recordkeeping and reporting requirements from both the Federal and State governments and concludes with:

> . . . you can see that if our management was not burdened with [such] paperwork...our company would be more efficient, more profitable, and more of a benefit to our community and the economy of Pennsylvania.

This small business owner points to an important but often overlooked reality: it is the cumulative impact of many individually reasonable paperwork requirements that becomes unreasonable. That is why oversight is so important, and why the Paperwork Reduction Act is so important in establishing OIRA as a central review and coordinating agency helping to control paperwork.

The Paperwork Reduction Act also allows us to support the oversight activities of the Office of Federal Procurement Policy in reducing Federal procurement paperwork, and to support the activities of the Small Business Administration under the Regulatory Flexibility Act. We work closely with OFPP and SBA, and rely heavily on their expertise to ensure that, collectively, we are controlling the paperwork burden on small businesses. Both of these agencies are testifying today on how the Paperwork Act is an effective tool for them.

The Paperwork Act has also been an essential component of OIRA's oversight of the totality of Federal information and regulatory activities. At least 90 percent of the Federal paperwork burden is imposed for regulatory or compliance purposes. As the Congress recognized in the Paperwork Act, paperwork reduction is not possible without

substantive and detailed attention to the regulations in which paperwork requirements are embedded, and to the regulatory goals that paperwork is supposed to carry out. In today's government, paperwork business is regulatory business, and vice versa.

Let me comment on two special problems facing small businesses with regard to paperwork and regulatory burdens. First, these burdens tend to fall disproportionately on small businesses; and, second, small businesses have a harder time making their voices heard in Washington.

There are 3.8 million small businesses with less than 100 employees in the United States today. They employ 40 million people, or 36 percent of the American workforce, and they generate 40 percent of new jobs.

Although this sector is vigorous, these small businesses appear to be more sensitive to Federal paperwork and regulatory costs. A study funded by the Small Business Administration in 1984 found that the cost of Federal regulatory and paperwork burdens were three times higher per employee for small businesses than for large businesses. This is because paperwork and regulations have fixed cost components, regardless of how many employees are in a firm.

An informal survey conducted in 1987 by Price Waterhouse (PW) found that senior management in small companies spend disproportionately more time completing government forms than do officials in larger companies. PW found that most small businesses spend more than 20 days each year on government paperwork. These studies support what you have long believed: there is good reason to look carefully at the special problems of small businesses before Federal agencies impose paperwork and regulatory costs.

Our experience also suggests that small businesses are typically under-represented in the public comments that we and agencies use to make paperwork and regulatory decisions. Small businesses may not be able to hire professionals to track the **Federal Register** and to ensure that their views are represented on the record. They have a harder time participating in the established processes. The result is that we usually know less about the problems of small businesses than we do about large businesses, and it is easy for Federal agencies to assume that, because small businesses don't complain, there are no problems. This situation makes it all the more important that we be vigilant about the needs of small businesses, and look harder for information about the impact.

One of the biggest problems is just trying to find out which Federal actions small businesses should be concerned about. In order to better assess the Federal impact on

small businesses, we recently expanded the information we request from agencies for the **Unified Agenda of Federal Regulations**, published twice yearly, to determine whether upcoming rules will affect small businesses. These changes permit improved analysis of the frequency and magnitude of Federal actions affecting small businesses. Agencies reported that, in the Agenda published in April of this year, 373 out of about 4,200 proposed rules were identified as especially affecting small businesses. But agencies also said they could not determine the small business impact of almost 900 other rules. Obviously, there is substantial room for improvement. It is difficult to control small business burdens if we cannot determine which actions are of concern.

Although the paperwork problem seems no smaller today than it did eight years ago, we have in fact eliminated enormous paperwork burdens. Since 1981, implementation of the Paperwork Reduction Act by the agencies and by OMB has reduced the amount of time that Americans would have spent filling out government paperwork by 500 million hours. Many of these reductions directly benefitted small businesses.

Let me discuss some of the cases where OIRA's actions have resulted in reduced burdens for small businesses.

Probably the best-known case is OSHA's Hazard Communication Standard, a regulation well-known by this committee. OSHA estimated the Standard imposed a paperwork burden in 1988 of 54 million hours, making it the fourth most burdensome paperwork requirement in the Federal government. We suspect that even that enormous investment in resources by the nation's businesses may be a substantial underestimate.

I should make it clear that OMB supports the goals of the Standard, which are to ensure that workers understand the hazards of chemicals in the workplace and the precautions needed to protect themselves. Nowhere have we questioned those goals. The questions that we have raised are whether the means chosen to reach those goals are the least burdensome necessary and have been demonstrated to have practical utility. Those are important questions. They are questions for which the Paperwork Reduction Act mandates answers.

We have felt for some time that we do not adequately understand the paperwork impact of the Standard or the practical utility of the information in the workplace. This was particularly the case when, pursuant to a court order, OSHA expanded in August 1987 the scope of the Standard from the manufacturing sector to practically the entire private sector. For the first time, small businesses such as hardware stores, service stations, building contractors,

laundries, and even offices were covered by the Standard. The expanded Standard brought up many new paperwork questions as OSHA attempted to tailor the expanded rule to adapt the flow of information more appropriately to millions of worksites and products.

In 1987, we held, under authority of the Paperwork Reduction Act, two public meetings on Hazard Communication paperwork. These meetings were attended by representatives of almost 100 organizations, Federal agencies, and businesses. Over 50 of them, including the Small Business Administration, presented oral and written views. They spoke forcefully about widespread confusion among businesses, particularly small businesses, regarding their responsibilities under the HCS; the need for better guidance from OSHA on how to comply; and the practical paperwork problems for small businesses and employers with non-fixed worksites, such as construction employers.

The meetings demonstrated that some paperwork requirements in the Standard did not meet the criteria of the Paperwork Reduction Act. On October 23, 1987, we approved almost all of the Standard's paperwork, but determined that the record would not allow approval of three paperwork provisions that in our judgment clearly failed the statutory tests. These provisions were particularly burdensome for small businesses such as construction contractors, restaurants, and wholesalers and retailors such as building supplies stores, hardware stores, and pharmacies.

We took two other important actions. The single issue on which every commenter agreed was the need for better guidance from OSHA on the development of hazard communication programs. The SBA estimated that an assistance program from OSHA would substantially reduce start-up paperwork costs. We instructed OSHA to work with the SBA to develop an assistance program. In September 1988, OSHA completed a written compliance assistance package.

Finally, we determined that OSHA should reconsider other paperwork provisions and we instructed OSHA to initiate rulemaking to consider less burdensome paperwork alternatives. On August 8, 1988, OSHA published an NPRM to consider alternatives.

These actions -- disapproval of unjustified paperwork requirements, completion of a compliance assistance program for employers, and initiation of a rulemaking to consider less burdensome paperwork alternatives -- flowed directly from the authority and public participation processes of the Paperwork Reduction Act. We think these are good outcomes that reduce paperwork while maintaining full worker

protection.

As you know, however, our exercise of our responsibilities under the Paperwork Reduction Act has led to the most important legal challenge to the Act since it was signed by President Carter in 1980. The U.S. Court of Appeals for the Third Circuit ordered OSHA to enforce the disapproved paperwork provisions because it decided that they were not paperwork subject to the Act, and, in any case, OMB's disapproval constituted substantive policy review not authorized by the Act. I am pleased that the Supreme Court has decided to review the lower court decision, which we believe fundamentally misconstrues the scope and purpose of the Act.

In our reviews of paperwork and rules generally, we look for ways to reduce the burdens on small businesses. For example, in a final OSHA rule published last week that requires employers to write down certain safety procedures, OSHA adopted, pursuant to comments that we filed under the Paperwork Act, a paperwork exemption that will reduce the burden for many small businesses while maintaining worker protection.

Internal Revenue Service paperwork requirements are among the most burdensome for small businesses. I would like to commend the IRS for its good-faith efforts to reduce and simplify tax-related paperwork. For example, the IRS has developed an extensive program to test its tax forms on taxpayers before issuing them for general use. The IRS earlier this year became the first Federal agency to hold town meetings with the public as an open forum for public opinion on tax forms.

Let me mention just two specific reductions in IRS paperwork. Pension reporting is a complex and onerous task for many small businesses. In 1988, the IRS agreed, following a discussion with OIRA, to eliminate for single-person employers the filing requirement to prove tax-exempt status. This action freed 300,000 small employers from this requirement and reduced their annual paperwork burden by over 200,000 hours.

Last month, we disapproved a tax return proposed by the IRS for use in 1990 by loggers. The problem was that the form -- whose five pages and eight schedules took 40 hours to complete -- was designed for large logging companies. Most of the detail was unnecessary for the many small loggers and people who sell trees off a few acres. IRS has agreed to simplify filing, perhaps by developing an EZ form, for small loggers and owners of small woodlots.

With regard to the Department of Defense, in 1985 and again in 1986, we disapproved a proposed information

collection concerning the certification of commercial pricing (known as FAC 84-10) that would have imposed large paperwork burdens on small businesses in particular. Under that proposal, whenever a business entered a contract with Defense or NASA under other than competitive procedures, the business would have had to certify that the price they were charging the government for any item was also the lowest public price it charged for the item.

This information collection requirement was intended to prevent price gouging for spare parts. Instead, the rules would have required businesses to keep records of prices charged to all customers for any item sold to the Federal government. Our disapproval limited the scope of this recordkeeping to a much narrower range of products, and substantially reduced the paperwork burden on small businesses.

We recognize that the Federal procurement process often places such large paperwork burdens on small businesses that it can become prohibitive for these firms to do business with the Federal government. Many Defense Department regulations affect small businesses through the subcontracting that is usually involved in a large Defense procurement. To further assist us in identifying these effects early in the rulemaking process, this Fall we will, for the first time, include Department of Defense rulemakings in the **Unified Agenda of Federal Regulations**. This will provide the public and the Congress, as well as OIRA, OFPP and SBA, with more information about the procurement paperwork burden affecting small businesses.

Likewise, information collections involving environmental issues often disproportionately burden small businesses. Unlike large corporations, small businesses often lack the technical expertise to handle the complicated programs and specialized language in this area. OIRA has taken steps to address this problem.

For example, OIRA staff helped streamline EPA's recent survey of hazardous waste generators so that small businesses, such as dry cleaners and automobile dealerships, would not have to answer over 200 questions that were more appropriate for firms generating large quantities of waste. This resulted in better information at a lower cost.

Also, OIRA continues to examine ways to reduce the difficulty that smaller businesses face in complying with EPA's right-to-know reports. By making these reports easier, I believe we can reduce burden on small businesses and get more accurate information. For instance, last February OIRA requested public comment on allowing some or all owners of underground storage tanks to use an existing EPA form in lieu of a new Community-Right-to-Know form for

reporting the existence and inventory of these tanks. We have received over 80 comments on this proposal, which we are currently reviewing with EPA. If adopted, this proposal would reduce the paperwork burdens on small businesses by 600,000 hours each year.

We are also concerned about Paperwork Reduction Act violations affecting small businesses. For example, last year small businesses brought to our attention two EPA surveys that had not received Paperwork Act review but that were very burdensome. The first, released by an EPA regional office, requested technical and financial information from many small businesses in the Midwest. The second, released by EPA headquarters, requested voluminous information from biotechnology firms, many of which employ fewer than 50 people. After our objection, EPA determined that these collections were unnecessary and recalled them.

There has been progress, but the job is far from over. Sometimes it seems that we are fighting a holding action, pushing back paperwork in one area while it balloons in another. New programs usually mean new paperwork, added to the paperwork of existing programs. In the past few years, we have seen large new paperwork burdens mandated by statutes, including immigration reform, tax reform, and Superfund amendments. The recent concerns about possible fraud and waste in Federal grants and contracts will also pressure agencies and the Congress to require more recordkeeping and reporting. Closer attention by the Congress to the paperwork requirements in new statutes would be of enormous assistance in reducing overall paperwork burdens.

We know that we must work harder to ensure that small businesses are not unduly burdened, while also ensuring that they meet the basic requirements of safety, worker rights, and public responsibility.

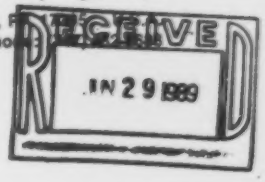
We have taken steps to try to learn more about the paperwork and regulatory problems of small businesses. In 1988, we revised the regulations implementing the Act to require agencies to disclose on the forms themselves the burden of responding. The agencies must also put on the form OMB's address and advise people that any comments or suggestions for reducing the burden should be mailed to us. This was intended to reach out to those people and businesses on Main Street, America, who do not usually participate in the public comment processes in Washington. Already, we have received in response to these burden statements some 1,000 comments from the public, including the comment that I cited earlier from the small sheet metal manufacturer. We believe that we can better reach small businesses through this new disclosure process.

In addition, we are looking for ways to increase opportunities for public participation. We want, for example, to hold more public meetings, perhaps outside of Washington, to hear from people face-to-face. We are discussing with the SBA plans to conduct joint OMB-SBA public meetings on specific paperwork topics, such as reducing duplicative State and Federal paperwork related to the environment.

The message that we and the Congress have been getting, loudly and clearly, is that more attention should be given to small business paperwork. We intend to do that. I must say that some of the revisions to the Act being discussed in the House as part of the reauthorization of OIRA, such as exempting OSHA's Hazard Communication Standard from the Paperwork Reduction Act, would dramatically impair our ability to address the paperwork problems of small businesses. Any revision to the Act should be examined carefully in light of the need to do more, not less.

I certainly appreciate the role that this Committee has played in supporting the Paperwork Reduction Act and activities related to small businesses. I would appreciate your views or any suggestions on improving our efforts on behalf of small business. I will be happy to answer any questions.

8930 Carlisle Road, Wellsville, P
FAX No: (717) 432-5601 Pho



Office of Information Management
Department of Labor - Room N-1301
200 Constitution Ave., NW
Washington, DC 20210

06/21/89

Dear Department,

Concerning the burden for collection of occupational information on Form 934-1:

About 2 hours were spent researching and reporting this information. This would not seem unreasonable to ask of the management of a small business, considering the envisioned benefit to the planners of vocational training. However, this report not only costs us a premium hourly rate and its associated costs, but also removes a man from productive management, thereby reducing profits associated with his effort.

Quoting Harris Wofford, "... no establishment will be surveyed more than once every three years."

We completed the same survey last year. (Copy of 850-1 enclosed).

Consider the Department of Labor as the English teacher who gives a reasonable one hour of homework to his students who have just been required to do one hour of Math, one hour of History, one hour of Science, and one hour of Health homework. In addition to the Form 934-1 requirements, our small business has has the following homework:

Industrial Water Use Survey; PA Dept. of Environmental Resources
Underground Tank Survey; PA Dept. of Environmental Resources
Dependent Care Assistance reporting; TAMRA, Internal Revenue Service
National Occupational Exposure Survey; NIOSH, Dept. of Health
Registration of Products; New York Fire Department
Application for Targeted Jobs Tax Credit; Joint Committee on Taxation, IRS
Employment Incentive Payment Program form; (Burden recently reduced by combining State and Federal reporting)
Airport Inspection Response reporting; PA Dept. of Transportation
Special Waste Profile Sheet; Waste Management, Inc.
Non-hazardous Residual Waste Manifest; Modern Landfill
Questionnaire for PA Worker and Community Right to Know Act; PA Dept. of Labor
Hazardous Substance Survey form; PA Dept of Labor
Emergency Planning and Response form; PA Dept. of Labor

Cont'd...

In addition to the above surveys and submissions, we are struggling with Federal, State, and Local tax returns, quarterly Estimated Tax Payments, 1099's, and all of the corporate tax-related filing, W-2's, W-4's, Wage Tax Reports, Unemployment Compensation reports and all of the employer-related filing, Excise Tax Reports, hundreds of Sales Tax Exemption Certificates and all of the PA Sales Tax-related reporting, and thousands of Material Safety Data Sheets and Environmental Data Sheets which are submitted to employees and State, Local, and Fire officials who pile them up never to be used.

Throw in all of the liability-related insurance reporting, IRS audit reporting, and Workers Compensation filings, and you can see that if our management was not burdened paperwork such as Form 934-1, our company would be more efficient, more profitable, and more of a benefit to our community and the economy of Pennsylvania.

Sincerely,
KAMPEL ENTERPRISES, INC.

David G. Kampel
Director

cc: Office of Information and Regulatory Affairs
cc: PA Hon. William F. Goodling, M.C. 19th District

Senator DIXON. Thank you, Mr. Plager.
Dr. Burman.

STATEMENT OF DR. ALLAN V. BURMAN, DEPUTY ADMINISTRATOR AND ACTING ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC

Dr. BURMAN. Thank you very much, Mr. Chairman. I am very pleased to be here this morning as well. What I plan to do is to discuss the Office of Federal Procurement Policy's efforts to review procurement rules and to reduce procurement related paperwork. I would also like to submit my prepared statement for the record and briefly summarize the statement, if I may.

Senator DIXON. Thank you. It will be reproduced in the record in full.

Dr. BURMAN. Thank you very much.

As you know, the paperwork requirements associated with procurement are substantial. The Office of Information and Regulatory Affairs has estimated this burden to be 289 million hours per year, which is an enormous amount of recordkeeping and filing of information. It is second in terms of burden only after tax reporting and recordkeeping.

As Mr. Plager noted, this procurement burden affects all businesses, but it particularly is troubling we believe for small businesses who don't necessarily have the kinds of resources and expertise necessary to handle this Government redtape.

Some might ask why should we concern ourselves with this burden in the procurement world since, for the most part, businesses are paid for their efforts. But, of course, it is not the Government who pays. It is ultimately the taxpayer who pays that bill.

The sources of paperwork are primarily threefold: The government-wide Federal Acquisition Regulation or the FAR; then there are a number of unique agency rules such as those put out by the Defense Department, the General Services Administration or other departments or agencies; and then finally there are separate contract-unique requirements as well.

Since the Office of Federal Procurement Policy was set up in 1974, we have been very much concerned about this regulatory burden, but we did not at that time set up any regular program to deal with that issue. That doesn't mean that we did not do some things to try to make this paperwork burden less of a burden on the economy and on the public as a whole.

For example, one of the major efforts that we did undertake starting in 1978 was to look at all of the various procurement rules and regulations for the civilian agencies and the defense-armed services procurement regulations and consolidate them into one governmentwide rule, which we finally accomplished in 1984. In that process, we eliminated some 30,000 pages of Federal regulations. So, we consider that to be a fairly significant effort and a very beneficial result for people who are trying to do business with the Government.

When Bob Bedell became Administrator of OFPP in the fall of 1986, he had come from the Deputy Administrator position in

OIRA, and I came in about the same time. We saw the need for setting up some kind of a dedicated review process to deal with this problem. We didn't want to see those 30,000 pages of regulation return, and we could see that beginning to happen. And so, we set up at that time a new system very closely modeled after that done in the Office of Information and Regulatory Affairs for reviewing paperwork rules and regulations and procurement rules in general and also for looking at regulations that were submitted to the Office of Management and Budget through Executive Order 12291.

Currently the way the system works, we have about four teams of people in the office reviewing all new procurement rules. Also, OIRA will forward to us every paperwork rule affecting procurement, and we will look at those and comment on those and send our comments informally back to OIRA. So, we work very closely with OIRA in this process.

We also look at every procurement rule that is published in the FEDERAL REGISTER. We do have a number of authorities that would allow us to rescind rules or deny the promulgation of rules that are inconsistent with Federal procurement policies. And so, we do have means to deal with these rules if we find them not to be acceptable.

We use the same standards of review that OIRA uses in reviewing these regulations. We want to see that they are necessary and appropriate. We want to see that they do not repeat the Federal Acquisition Regulation and that they impose the minimum necessary burden on Government and industry.

Since the inception of the program in 1987, we have reviewed some 500 rules working with OIRA, and we have found some 40 percent of those to be deficient in one respect or another. So, we have had a significant number of comments to send back to the agencies. And, fortunately, we have been very pleased with the agencies' response to our comments. For the most part, they have taken care of the issues that we have raised with them.

One other set of procedures that I would like to mention to you is something that has been newly set up in our authorization bill. This is a requirement that when the general public finds a rule that it considers to be inconsistent with government-wide procurement policies, there is now a 60-day review process set up in law for us to look at that particular rule from the agency and make a judgment on whether or not it is inconsistent with governmentwide procurement policy, and then do something about it, if it is. We have had about four cases brought to us under these new procedures so far, and I notice that the American Subcontractors Association mentions one in their testimony as well. So, we think this is a very effective procedure for trying to deal with the proliferation of rules and regulations.

In my testimony I discuss a number of examples of the kinds of rules and regulations that we have been spending our time on. I might just mention briefly a few of those now.

One is in the area of individual sureties. As you know, when construction work is performed, bonds are required to ensure the performance of the contract and payment to subcontractors and others. Firms can use corporate sureties or individual sureties.

It had been brought to our attention a couple of years ago—Senator Chiles had been very much involved in this issue—that there

had not been very good guidance provided to contracting officers for determining what would be an acceptable surety, and as a result we have had numerous cases where these sureties have proven worthless. And, of course, the Government then is in a difficult situation, as are all of those people who work on subcontracts. We have been working closely with the agencies to come up with a new rule that will set up very clear procedures, I think acceptable procedures, for everyone and uniform guidelines to make sure that that sort of situation does not occur. If it occurs, it will occur much more rarely than it does today.

Another example that I know that you are quite familiar with is in the area of technical data rights. This is another area where we have been working with the agencies to see if we can come up with a more balanced approach that would allow contractors to retain their rights in data if the Government does not need those data, and hopefully then encourage those contractors to commercialize their innovations.

We are quite a long way toward achieving that result now. We have been working with the Pentagon. I believe the defense rule will be coming out shortly and then we plan to use that as the basis for a government-wide rule. It's our view that when that rule does come out, many of the small high technology firms who do business with the Government will be much more interested in working on Government projects, since they will not feel that their vital proprietary rights are in jeopardy in this process.

A third area, another recent requirement set in law is P.L. 100-656, Section 304, that requires liquidated damages to be paid if firms fail to carry out their subcontracting plans with small businesses and small and disadvantaged businesses. Again, this is something that we have been working with the agencies on and believe we have come up with a set of procedures that are uniform, that are clear-cut, and that are fair to both the prime contractors who are in this process and to the small businesses whom we hope to encourage to work with the Government.

In all of these cases we are looking to try to set up a uniform approach, a government-wide approach, to try to cut down on unique clauses.

One final area that I wanted to mention to you, since this is something that we hope to be sending to Congress shortly, is a new proposal to try to improve the Government's approach to buying commercial products. This has been a concern I know of the Congress for many years. As you know, it is very difficult for many small firms to try to deal with all of the tight specifications and what have you that the Government requires in doing business with the Government, and many of them just basically opt out in those situations.

What we are going to do is to propose a bill that allows the Government to purchase items based on best value and to eliminate these kinds of over-specifications. I mention in my testimony, for example, a 33 page specification on a hammer that someone might buy. One can understand that it might give someone pause in trying to work for the Government when one sees these kinds of things. Clearly, you can get intimidated by that. Our view is this

new bill is going to very much improve the ability of small businesses to work for the Government.

All of these types of things are the kinds of issues that we are discussing in a procurement paperwork report that we have been required to send to Congress, based on our reauthorization bill last year. We expect that report to be up here very, very shortly. Our goal is clearly to try to reduce those 289 million burden hours that I mentioned previously. We feel that this effort may not have the visibility of some of the other kinds of issues that we deal with, but we feel it's a vital effort, a very important one, and we also feel that our association with OIRA is vital to continuing this process. And so, I would strongly urge that whatever support can be given by this Subcommittee to OIRA's reauthorization we would certainly encourage.

That concludes my prepared remarks.

[The prepared statement of Dr. Burman follows:]

Summary of Statement of
Allan V. Burman
Deputy Administrator and Acting Administrator
Office of Federal Procurement Policy (OFPP)

Introduction. Mr. Burman's statement outlines the policies and procedures followed by OFPP in reviewing procurement rules and in working with the Office of Information and Regulatory Affairs (OIRA) to meet the objectives of the Paperwork Reduction Act (PRA).

Background. Paperwork requirements associated with the Federal procurement process are substantial and have a significant effect on both large and small business participation in Government contracting. The annual procurement paperwork burden is estimated at 289 million hours. This makes procurement-related paperwork the second most burdensome information requirement imposed on the public, behind tax reporting and recordkeeping.

Paperwork Sources. Paperwork associated with the Federal procurement process generally flows from requirements that are specified in: (1) the Federal Acquisition Regulation or by standard forms; (2) procurement rules unique to individual agencies; or (3) provisions in specific contracts or contracting actions, and not required by regulation or underlying statute.

OFPP's Regulatory Review Process. Beginning in 1987, OFPP formalized its regulatory review process and tied the process directly to OIRA's paperwork reduction efforts. Today, OFPP staff review every procurement regulation proposed by Federal agencies to ensure that each regulation is necessary and appropriate, that it does not paraphrase or repeat provisions of the FAR and that it represents a minimum necessary burden on both the private and public sectors.

Examples of Specific Review Actions. Several examples of current OFPP projects and regulatory actions are discussed in the statement. These actions are designed to have a beneficial impact on small business and include policies and procedures covering individual surety bonds; acquisition of rights in technical data; the assessment of liquidated damages against prime contractors that do not achieve small and small and disadvantaged business subcontracting goals, and the development of legislation to promote the acquisition of commercial (off-the-shelf) products and commercial-style buying practices.

Conclusion. The statement concludes by noting that future OFPP paperwork reduction efforts will be concentrated in several key areas to be identified in the Paperwork Reduction Report now being prepared by OFPP, in consultation with OIRA, pursuant to Section 25(g) of the OFPP Act. The statement also provides a strong endorsement for the reauthorization of OIRA.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

NOT FOR RELEASE UNTIL
DELIVERY SEPTEMBER 7, 1989

STATEMENT

OF

ALLAN V. BURMAN

DEPUTY ADMINISTRATOR AND ACTING

ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY

BEFORE THE SUBCOMMITTEE ON

GOVERNMENT CONTRACTING AND PAPERWORK REDUCTION

COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

SEPTEMBER 7, 1989

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before your Subcommittee to discuss the Office of Federal Procurement Policy's (OFPP) efforts to reduce procurement related paperwork. My prepared remarks focus on OFPP's policies and procedures for reviewing procurement rules and paperwork, and for working with the Office of Information and Regulatory Affairs (OIRA) to meet the objectives of the Paperwork Reduction Act (PRA). I will also provide preliminary comments on our report on the procurement paperwork burden.

The report is required by the OFPP Act Amendments of 1988 (Public Law 100-679).

BACKGROUND

Paperwork requirements associated with the Federal procurement process are substantial and have a significant effect on both large and small business participation in Government contracting. The annual burden is estimated at 289 million hours and makes procurement-related paperwork the second most burdensome information requirement imposed on the public, behind tax reporting and recordkeeping. Much of that paperwork, however, is required by law, such as cost and pricing data.

One might argue why concern ourselves with this burden, since those filling out forms and meeting these requirements are paid for their efforts. These costs, however, are passed back to the Government, and it is ultimately the taxpayer who pays. Moreover, while paperwork is expensive for both large and small businesses, it is generally more troublesome for small business. Most major corporations have the expertise, experience and resources needed to deal with these kinds of requirements. The same, though, is not true for small businesses and, indeed, many of these firms are unwilling to compete for Government contracts because of red tape.

Paperwork Sources

The paperwork associated with Federal procurement generally flows from three primary types of requirements:

1. Requirements that are specified in the Federal Acquisition Regulation (FAR) or that are required by Standard Forms.

2. Requirements that stem from agency procurement rules and are unique to individual agencies.

3. Requirements that are unique to a specific contract or contracting action, and are not required by regulation or underlying statute.

Since its establishment in 1974, OFPP has recognized the need to try to stem unnecessary paperwork flowing from the above sources. Historically, however, OFPP and agency procurement organizations tended to approach paperwork on an ad hoc basis. That is not to say that this approach has not been effective. Certainly, the establishment of the FAR in 1984 and the concomitant reduction of an estimated 32,000 pages of agency primary regulations significantly reduced paperwork burdens. This reduction is perhaps, to date, one of our most significant accomplishments.

OFPP's Regulatory Review Process

Beginning in 1987, however, we in OFPP saw the need to instill more discipline in our paperwork and regulatory reduction efforts. Frankly, we recognized that without a dedicated approach to monitoring paperwork and other regulatory requirements, the FAR system would start expanding, and if not checked, ultimately approach the original volume of 64,000 (+) pages of procurement regulations that existed prior to the FAR. As you know, a common approach to resolving many administrative problems is to impose additional paperwork requirements.

The system set up by OFPP in 1987 formalized the OFPP regulatory review process and tied this review directly to OIRA's paperwork reduction effort. The association of our review process with the OIRA paperwork clearance authorities has greatly strengthened our program. Today, OFPP staff reviews every procurement regulation proposed by a Federal agency to ensure that each regulation is necessary and appropriate, that it does not paraphrase or repeat provisions of the FAR and that it represents a minimum necessary burden on both the private and public sectors. Working concurrently with the OIRA, we have reviewed over 500 regulations (and related paperwork clearance cases) and found 40 percent to be deficient in one respect or another. The proposing agencies

have taken action to accommodate our concerns and suggestions, or are currently reviewing our comments.

An additional feature recently added to this review process is a procedure whereby any member of the public can request OFPP to review a specific regulation to determine its conformance to the FAR. The new OFPP Act amendments allow OFPP 60 days to review and reply to such requests.

The criteria used by OFPP in evaluating paperwork associated with procurement regulations are essentially the "Paperwork Reduction Act Standards For Review." These standards require that each collection of information meet three specific tests:

1. That the information being collected has practical utility for the agency;

2. That the information is not more than the minimum needed to meet the agency's objective, and

3. That the information is not duplicative of similar information otherwise available.

Examples of Specific Review Actions

Reviewing the need for new regulations and ascertaining the appropriateness of the accompanying paperwork does not often achieve visibility outside the affected agencies. It is, however, important. We view it as a major way of making the procurement process more efficient and, thereby, contributing to good Government. Examples of some of our recent regulatory review efforts are noted below.

Individual Sureties. As a prerequisite to performing Federal construction contracts, prime contractors are required to obtain either individual or corporate surety bonds. About two years ago, a problem was brought to our attention pertaining to the acceptance of individual surety bonds. The problem, in essence, was that the FAR did not provide adequate guidance to contracting officers concerning the acceptance of such bonds. The paperwork and "proof" requirements varied greatly and in some instances bonds that were not backed by adequate assets were accepted. As an example, the prime contractor on a NASA contract in California recently defaulted. The sureties (there are two on each contract) also defaulted. The property used by the sureties as collateral for the bonds was inadequate and 51 subcontractors are owed $2.9 million.

Over the last 18 months, OFPP has worked with the FAR regulatory committees, concerned Congressional staff, and various small business groups in developing a new regulation that will standardize the acceptance procedures for individual sureties. The new procedures will provide for minimum necessary paperwork to protect both the Government and the suppliers and subcontractors. The new regulations should be published within the next few weeks. The regulations include new forms reviewed by OIRA.

Technical Data Rights. Procurement policies in the past have generally required contractors to provide the Government with complete "technical data packages", including unlimited rights to the data and any patents or copyrights developed in the course of completing a Government contract.

OFPP and OIRA have been working over the last two years with the major procuring agencies to develop a more balanced policy, one that recognizes the legitimate needs and entitlements of both Government and industry. Generally, that policy would: (1) limit Government acquisition of rights in technical data and computer software whenever more limited rights (such as royalty free use by or on behalf of the Government) are

sufficient; and (2) include negotiation of data rights ownership in the contract award process. This approach is consistent with P.L. 100-180; the Presidential Executive Order on "Facilitating Access to Science and Technology", and the recommendations of the Packard Commission. In our view, the new approach to rights in technical data will not only reduce the paperwork burden, but also significantly improve American industrial competitiveness by increasing the opportunity for commercialization of new technologies. Moreover, many small, high technology firms whose proprietary data are vital to their livelihood will be much more likely to be interested in Federal contracts.

Liquidated Damages. Recent amendments to the Small Business Act require offerors for certain prime contracts to establish plans, which contain dollar goals, for letting subcontracts to small and small disadvantaged businesses for goods and services needed by the prime in completing the contract. Section 304 of Public Law 100-656, amends the Small Business Act by requiring the establishment of a FAR contract clause that allows for the payment of liquidated damages in the event the contractor fails to make a good faith effort to achieve the goals of its subcontracting plan. OFPP worked closely with the regulatory agencies and

concerned Congressional staff to develop the regulations that will carry out this provision of law. The regulations provide for straightforward procedures that minimize paperwork and reporting burdens.

Agency Clauses and Forms. In reviewing various regulations proposed by individual agencies, including the accompanying "collection instruments" submitted to OIRA, we often come across proposed forms and clauses that, while needed, are not necessarily unique to the needs of a specific agency. Agencies' efforts to address generic problems on an agency-by-agency basis (as opposed to a Government-wide basis) are one of the most common means of proliferating paperwork. We have been successful in turning a number of these individual efforts into Government-wide efforts and thereby having one Government-wide form or clause in lieu of numerous diverse agency forms and clauses. For example, we have requested various individual agencies to develop FAR cases on forms and clauses covering such generic topics as: "utility contracts"; "payments under fixed priced construction contracts"; "organizational conflicts of interest"; and the qualifications and financial data to be collected from contractors. For those doing business with more than one Government agency, the benefits are clear-cut.

Commercial Products. One of our major ongoing efforts is to develop a bill that will authorize the use of more flexible commercial-style procedures for buying commercial products. This proposal is designed to facilitate commercial product purchases by encouraging the use of market research to avoid over-specification and allow routine selection of products on the basis of best value rather than simply lowest price. Many businesses, particularly small businesses, cannot set up special product lines just to meet the requirements of a Government specification. For example, thirty-three pages of Federal specifications on hand-held hammers might cause anyone to take pause. In lieu of modifying their standard commercial products, many businesses simply do not compete for Government contracts. Moreover, when too much emphasis is placed on price to the exclusion of other factors, such as performance or reliability, the competitive advantage that small entrepreneurial firms seek to achieve through innovation goes unrecognized. The new bill is in the final stages of development and we plan to submit it to Congress shortly.

OFPP's Paperwork Report

Mr. Chairman, in your letter of invitation you expressed interest in the paperwork report now being prepared by OFPP in compliance with Section 25(g) of the OFPP Act Amendments of 1988. Section 25(g) requires OFPP, in consultation with OIRA, to report to Congress on the extent of the paperwork burden created by the Federal procurement process and to determine the extent to which the Federal procurement system can be streamlined to reduce unnecessary paperwork.

The report required by Section 25(g) is not yet complete, and, therefore, my comments about it must be preliminary. However, as can be expected, the report identifies a significant paperwork burden resulting from the procurement process. It also points out the major sources of the burden as it relates to the different parts of the FAR.

The greatest portion of the burden is attributed to information collections which cannot be attributed to any single FAR part or specific subject area. These are often contained in agency supplements to the FAR. They impose over 177 million hours on the public. FAR Parts 15, 27, and 45 also appear to offer opportunities for streamlining. FAR Part 15 prescribes the policies and procedures governing contracting for supplies and services by negotiation. FAR Part 27 contains policies, procedures and contract clauses

pertaining to patents, data and copyrights, and Part 45 covers Government property provided to contractors.

As mentioned previously, in terms of a total burden, it is estimated that over 289 million hours of annual paperwork effort are expended by businesses that compete for Government contracts. Our goal is to reduce that amount, and to reduce that amount by targeting key areas of the FAR that appear to impose the greatest burden. The joint OIRA/OFPP paperwork review process is vital to achieving this goal.

In summary, Mr. Chairman, I believe that our regulatory review process has had a significant effect on improving the prospects of small firms for doing business with the Government. With the support of Congress, we plan to continue and to improve these efforts at paperwork reduction, regulatory simplification and acquisition streamlining. The Paperwork Reduction Act and the OIRA, as established by that Act, have been an integral part of our past efforts to control unnecessary procurement-related paperwork and we strongly urge that the OIRA be reauthorized.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions you or your colleagues on the Subcommittee may have.

Senator DIXON. Thank you, Dr. Burman.
Mr. Swain?

STATEMENT OF HON. FRANK S. SWAIN, CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, WASHINGTON, DC

Mr. SWAIN. Senator, thank you very much for your invitation to appear, and I welcome the interest of the Subcommittee in this particular issue. I think that the highest and best use of the Small Business Committee is to illustrate the small business perspective on issues on which the Committee admittedly does not have legislative jurisdiction, but nonetheless, whether because of the rush of business or for other reasons, the committees that do have legislative jurisdiction may not have the opportunity to adequately consider what the small business impact is of their actions or legislation. So, this is a very important hearing on a very important subject.

Both Chairman Sisisky and the previous two witnesses have mentioned a number of the key points, and I would like to summarize very quickly our experience in the Office of Advocacy with the Office of Information and Regulatory Affairs and the Paperwork Reduction Act. And I would like to do that by example.

The Hazard Communication Standard has been mentioned already, and I think it is probably a compliment to the procedure that some people are—apparently on the House side—seeking to take the Hazard Communication Standard out from under the jurisdiction of this regulatory review process. It seems to me that that indicates that the regulatory review process has been effective. When it is effective, it forces a second look at some initially poor judgments, and people that are advocates of a particular rule don't like to have to go through that second-look process. And maybe the easiest way to get around it is not to write a better rule, but just to change the law. That seems to be the perspective taken on this.

That type of proposal comes up from time to time. Unfortunately, it was legislated, I believe, a number of years ago relating to agricultural marketing decisions. OIRA is not allowed to take a look at Agricultural Marketing Act decisions because apparently some people felt that they were getting in the way of the regulatory system which, at least in the opinion of many small businesses, needs to be changed.

So, it's a compliment to the effectiveness of the system that there are, from time to time, proposals to exempt certain types of rules from paperwork review, and I would strongly urge the Congress to oppose those attempts both in Hazard Communication and as they come upon other contexts.

Let me give a specific example where the paperwork review standard has been important in the area specifically of Government contracting.

In April 1989, the General Services Administration proposed a rule which would have had the effect of requiring the unnecessary submission of multiple Material Safety Data Sheets to the Government. If you sold a case of motor oil to the GSA motor pool in Chi-

cago, 24 cans in a case, you would have had to put in 24 separate pieces of paper, MSDSs. Or if you sold a case of typewriter whiteout to the GSA—I assume it comes in quantities of 70 or 140 or whatever—you would have had to put in 140 separate pieces of paper, one for every little bottle to make sure that the people that were using it were cognizant of the hazards. A silly rule if there ever were one.

But it was not apparently silly to the people at GSA because they formally proposed it in the Federal Register, and it fell to the paperwork review process spearheaded by OIRA to take a second look at that and say, well, we feel that we should have safe Government workplaces but, on the other hand, we're looking at contractors, especially small office suppliers being able to sell to the Government, the Government having a competitive market in these particular purchases. And is this really necessary?

The result is that the pursuit of this particular proposal has, at this point, been discontinued. It is at least questionable whether that result would have obtained if there weren't a Paperwork Reduction Act.

Let me provide another example of successful utilization of the process provided by the Paperwork Reduction Act.

As you know, the Congress has passed a number of rules that significantly strengthen environmental regulation. One set of rules that was passed in the Superfund amendments in 1984 has to do with emissions of hazardous substances. From here on out, companies that work with hazardous substances will have to report routinely on whether they have them on premises and therefore whether they might be emitted at some time into the environment.

At the same time, the Congress passed a different rule which significantly strengthened the regulation of underground storage tanks because there have been many documented problems with those tanks leaking.

Two different sections of EPA are responsible for implementation of these two different laws. This led to the following result: People that had underground storage tanks were getting two separate sets of forms, one from the people enforcing the Superfund law, saying what hazardous substances do you have, how are they stored and how might they leak out; and another set of forms asking almost the identical question from the Underground Storage Tank Division of EPA, which is responsible for enforcing that program, saying what underground tanks do you have, when were they built, how is the substance stored, and whether it will leak out or not.

The small tank farm operator in southern Illinois or any other part of the country has to cope with these two different sets of forms. Similar questions were phrased slightly differently, requiring the answers to be completely redone.

From businesses that have underground tanks, EPA basically wanted to know what they have stored and whether it is going to be released or not. We asked EPA why they couldn't ask the same questions and just make a photocopy of the answer and send one copy to the record division and the other copy to the underground storage tank division? Well, for whatever reasons that did not make enough common sense to those in charge at EPA.

Under the normal review authority of the Office of Information and Regulatory Affairs on paperwork, they invited submissions of public comments on these two forms and the necessity of requesting basically the same information twice. We submitted from SBA a proposal that these two forms be combined. Other people in the industry submitted proposals. And the result, I am pleased to say, is a positive one: EPA has now reproposed the rule and specifically exempted underground storage tank operators from the second set of reporting requirements because they figured out that they could share the forms internally.

This would not have happened, Senator, without there being a strong Paperwork Reduction Act which gives somebody outside of EPA not only the power to look at the proposals—SBA has the power to look—but the power to require EPA to go back and take a second look and come up with a different answer. And, frankly, when you strip everything else away, it is not the review authority itself that people object to when criticizing the record of OIRA, it is the review and the reformulation; that somebody in the Government has the power to tell EPA or OSHA to go back and take a second look. And that is what is absolutely essential in the way the system is structured now.

I think that that is what some of the legislation, particularly in the House, would tend to strip away, and I think that would be very bad for small business. As Mr. Plager has already mentioned, there are inherent problems in getting a strong small business voice. The rules are complicated. There is a lot going on, and it is very important that we have the OMB available to take that second look.

There are also things that the Congress has done that impose a lot of rules. Our statement mentions Section 89. Clearly, that needs a second look. It needs a second look both from a regulatory perspective and a legislative perspective. It is a classic example of where there is a good reason for Section 89. You do not want to use the Tax Code to stimulate discrimination among fringe benefits, but the cure is worse than the disease. It is primarily a paperwork problem, and it is primarily one that I do not think people would be really seriously looking at outside the IRS if it were not for the attention it has gotten up here and because of the Paperwork Reduction Act.

Because your hearing particularly is focused on procurement issues related to paperwork, we mention in our statement an example of another bill that sounds great in the abstract, but for various reasons will impose tremendous burdens. That is H.R. 43, over on the House side, and it would mandate that every Federal contractor provide medical benefits to his or her employees. Now, we could talk another time about whether mandated benefits is a good, bad or indifferent idea. I happen to think it is a bad idea.

But be that as it may, for the first time this bill would not only mandate medical benefits, but put Government contractors under extensive ERISA jurisdiction which they may not necessarily be under. It would create I think a tremendous increase in the amount of paperwork necessary for a Government contractor to show before doing business with the Government, paperwork that does not have a darned thing to do with the item being sold or the

service being provided to the Government. And I think it is terribly important that the Congress and the Administration on a regular basis take a look at the paperwork aspects of these otherwise good-sounding ideas.

To summarize, Mr. Chairman, we at the SBA feel that there have been significant advances made in controlling paperwork for small business. Unfortunately, in many cases the significant advances have been clouded by significant advances in other regulatory requirements which impose new paperwork.

We have a very positive relationship with both the Office of Federal Procurement Policy and the OMB Office of Information and Regulatory Affairs. I absolutely endorse what Mr. Plager has said in the fact that his office, particularly under his stewardship, has been very sensitive to small business concerns when they have been raised.

And I urge you to urge the Government Affairs Committee to not only reauthorize the Office of Information and Regulatory Affairs and the Paperwork Reduction Act, but resist any temptation to weaken the law at all.

Thank you, Mr. Chairman. I would be happy to reply to any questions.

[The prepared statement of Mr. Swain follows:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

TESTIMONY OF

HONORABLE FRANK S. SWAIN

CHIEF COUNSEL FOR ADVOCACY

U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT CONTRACTING

AND PAPERWORK REDUCTION

OF THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

SEPTEMBER 7, 1989

Mr. Chairman:

Thank you for the opportunity to share my views regarding the critical necessity of reauthorizing the Paperwork Reduction Act (PRA). This legislation has been and remains essential to the protection of small business from unnecessary collection of information burdens. Through the efforts of the Office of Management and Budget (OMB) and its Office of Information and Regulatory Affairs (OIRA), progress has been made toward alleviating unnecessary paperwork burdens and coordinating federal government information collection requirements. As discussed below, however, more needs to be done, and the active cooperation of Congress and all the agencies is needed. Reauthorization of the PRA is critical to permitting progress to continue, and, hopefully, to the achievement of meaningful paperwork reduction.

<u>There is a Critical Need for Coordination and Oversight of Federal Information Collection Requirements by OIRA</u>

By the end of the last decade, the cost of doing business had increased dramatically as a result of the explosion of federal regulation during the 1970s and the concomitant compliance costs. The reduction of the burdens imposed on small business from federal regulation was identified as a priority item by the 1980 White House Conference on Small Business.

The legislative and executive branches recognized the tremendous burdens imposed by the complexity of federal regulations. One bipartisan legislative response was the enactment of the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. § 3501 et seq., which took effect on April 1, 1981. It was designed in part to reduce both the amount of paperwork that business would be required to generate and maintain and to limit recordkeeping requirements. The PRA targeted several classes of the public for relief, small business in particular.

The PRA works in conjunction with the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601-612 (1981), which was passed during the same session of Congress. The RFA requires agencies to analyze proposed regulations to assess their burdens on small entities. Paperwork is one kind of burden that agencies must analyze in complying with the RFA. The RFA places the monitoring and reporting responsibility in the Office of Advocacy of the Small Business Administration, and therefore, the Office of Advocacy has a keen interest in how the RFA works in conjunction with and as a complement to the PRA. When information collections are a large component of the regulatory burden, OMB review both informs the public of the paperwork burden and insures that the paperwork burden impact is practical and necessary.

OIRA reviews proposed rules for their paperwork impact and targets reduction goals for federal agencies to implement. Each

year OMB publishes an Information Collection Budget (ICB) which reflects each agency's reduction goal and specifically identifies forms and other information collection requirements which have been added or eliminated. The ICB describes the burdens imposed on individuals, businesses, and state and local governments to prepare or maintain federally-mandated forms, reports and records. With several exceptions, the PRA requires federal agencies to obtain OMB approval before conducting or sponsoring a collection of information. In order to limit paperwork, OIRA is required to determine that paperwork requirements have practical utility, that they are the least burdensome necessary, and that they do not duplicate information otherwise available.

By virtue of the PRA, OIRA is uniquely positioned to assess federal burdens and to insure government sensitivity to the needs of the small business community which are often ignored by the regulating agencies themselves. Without the proper interagency coordination and oversight currently performed by OIRA, unexpected results can occur.

Hazard Communication Standard

An excellent example of the need for paperwork review is the Department of Labor's Hazard Communication Standard (HCS), also known as worker right-to-know regulations. This Committee has taken a welcome interest in this rule. The HCS, promulgated by

the Occupational Safety and Health Administration (OSHA), is by far the most paperwork intensive regulation promulgated by the Department of Labor. As issued on August 24, 1987, it would require every employer in the nonmanufacturing sector of industry[1] - approximately 3.5 million establishments according to OSHA, or up to 4.6 million according to Advocacy estimates - to create written hazard communication and training programs for employees and to keep and maintain Material Safety Data Sheets (MSDS) for each "hazardous chemical" product used in the workplace - a universe of more than 500,000 products. Additionally, employers at "multi-employer workplaces," such as construction sites, would have to make their MSDSs available to other employers on site whose employees may be exposed to those chemical hazards.

Recognizing the potential burdens of the expanded standard, OIRA held public hearings during 1987 to analyze the paperwork burdens and consider possible alternatives. Representatives from a broad range of affected industries, as well as the Office of Advocacy, urged that the standard be modified and that OSHA develop or approve hazard communication training materials which could be used by small businesses to facilitate compliance in a less costly manner. OSHA estimated first year compliance costs for nonmanufacturers to be $687 million, whereas Advocacy estimated

---

[1]Manufacturers were covered in an earlier rulemaking.

the costs to be nearly $2 billion, attributable in large part to paperwork burdens. These burdens are massive and very real. The shared goal of insuring the health and safety of our most precious asset, the nation's workforce, will not be realized by the mere promulgation of impractical paperwork requirements which are nearly impossible to implement. This is precisely the problem with the HCS.

One of the most important modifications to the standard needed to reduce unnecessary paperwork burdens is the adoption of a meaningful exemption for common consumer and household products. As written, the HCS requires training and MSDS recordkeeping on all substances which are deemed hazardous, even those products usually used by a typical consumer in a non-workplace setting. Although an exception for consumer products is included in the rule, it is far too narrow to provide any meaningful relief. A broader exemption is necessary to take out from the regulatory burden such common items as ordinary household cleanser and "Wite Out". Without such an exemption employers will be flooded with MSDSs for thousands of products which, although they contain "hazardous chemicals" within the meaning of the standard's broad definition, pose little or no appreciable risk in the workplace.

Testimony before OMB supported the need to adopt a "consumer products" exemption similar or identical to that contained in Title III of the Superfund Amendments and Reauthorization Act of

1986 (SARA). SARA exempts from the detailed community right to know environmental reporting requirements to be imposed by the Environmental Protection Agency "any substance to the extent that it is used for personal, family, or household purposes, or is present [in a workplace] in the same form and concentration as a product packaged for distribution and use by the general public." Since both employers and employees are generally familiar with such common consumer products, their hazards, and their usual uses, the provision of detailed MSDS information for all such products is unnecessary for right-to-know purposes and lacks practical utility within the meaning of the Paperwork Reduction Act. Rather, basic hazard communication training supplemented by existing label information should be sufficient when employees are using common consumer products. Flooding the workplace with MSDSs for common consumer products will have the perverse effect of causing them to be ignored, and workers will then likewise ignore the MSDSs for the truly hazardous industrial-strength chemicals.

Based on the extensive record compiled in the Paperwork Reduction Act review, OIRA issued a decision on October 28, 1987, disapproving certain provisions of the standard and directing OSHA to engage in further rulemaking to modify and improve the standard. Among other things, OIRA recognized the need for

generic hazard communication materials[2], including adequate outreach to the regulated community, as well as a meaningful consumer products exemption and an alternative approach for multi-employer workplaces.

At this time, the status of these provisions is not fully settled. The Supreme Court has agreed to consider the proper scope of OIRA's authority under the PRA in this case. OSHA can still consider these necessary changes to the standard, as well as the evidence presented in this hearing, however, because it has not completed its rulemaking proceeding. However, the rulemaking record is closed.

GSA Implementation of the Hazard Communication Standard and its Imposition of Unnecessary Procurement-Related Paperwork

Unfortunately, the dilemmas posed by the MSDS system were not to remain limited to the private sector and became a prime example of one regulatory problem sparking another, in this case potentially generating useless procurement-related paperwork. In April 1989, the Federal Supply Service of the General Services Administration (GSA) published a proposed rule which would have

---

[2]Generic training materials are those materials prepared for a specific kind of business rather than relying on each business to create completely separate materials. For example, dry cleaners could have a generic training program which would address all those hazardous substances in general use at a dry cleaning facility.

required federal contractors to include material safety data sheets for each item in each shipment of "hazardous chemical" products, as defined by the HCS. GSA's proposed regulatory action would have imposed burdens far in excess of any contemplated even by the Hazard Communication Standard itself. OSHA's HCS rule would only require one MSDS from a supplier to a customer but this proposal would have required a carton containing a gross of little bottles of "Wite Out" to be accompanied by 144 Material Safety Data Sheets, a case containing two dozen quart cans of motor oil to be accompanied by 24 MSDS sheets, etc.

As you can imagine, there was an outcry from the regulated community. Requiring multiple MSDSs on consumer products procured by the government has no practical utility for GSA, and imposes a totally unnecessary paperwork burden on the procurement process. Advocacy filed strong comments with GSA and brought the matter to OIRA's attention for review under the PRA, resulting in the proposal being discontinued. This demonstrates the critical need for the type of interagency coordination and centralized oversight embodied in the PRA.

Legislative Burdens

In addition to burdens imposed by federal regulatory agencies through their activities, the Congress itself has added to the

burdens imposed on small business through some of its initiatives in the past. An example of another paperwork burden in which OMB's oversight and analysis has played a role concerns the Internal Revenue Service (IRS) regulations under Section 89 of the 1986 Internal Revenue Code, which it was directed to promulgate by Congress. The policy goal of Section 89 is to promote more equitable distribution of health (and life insurance) benefits, where the firm and its employees receive tax subsidies for the provision of those benefits. Section 89 sets the parameters for treatment of employer-sponsored fringe benefit plans under the Code to ensure that the tax subsidy for encouraging such plans is efficiently used; that is, that tax-subsidized benefits are equitably distributed among all employees and relatively close in value. In order to ensure compliance with the legislatively-mandated Section 89, a number of information collection requirements were imposed on employers.

Addressing only the cost of compliance pertaining to health benefits - other fringe benefits, including life insurance and flexible spending accounts, undoubtedly will increase the burden of compliance but were not considered in our estimates - Advocacy estimated that paperwork and recordkeeping burdens were higher than those prepared by the IRS. We estimate that Section 89 would cost over $7.5 billion based on time spent by business owners and consultants in gathering the required information from

employees and insuring that the benefit plans do not discriminate in favor of highly compensated employees.

IRS reviewed the Treasury estimates in light of its own analyses, and revised the burden estimates to more accurately reflect the burden imposed on regulated entities by Section 89. Due to the concerns expressed over Section 89, particularly the compliance burdens, the Treasury Department took action to minimize the impact of the regulations until Congress finishes its current reconsideration. Significant relief, however, must come from Congress since the discretion of the regulatory agency is necessarily limited by Section 89 itself.[3]

Section 89 is by no means the only example of the problem of additional paperwork being generated by legislative mandates without the benefit of a paperwork burden analysis similar to that performed for agency regulations. Presently pending is a bill, H.R. 43, which would among other things mandate that all federal prime contractors and their subcontractors provide guaranteed minimum levels of pension benefits and health insurance coverage to all their employees. Although we oppose mandated benefit legislation generally, it is significant to note

---

[3] Bills have been reported in both the House and Senate which would significantly ease the burdens on small business in complying with Section 89. Although the regulations were supposed to take effect January 1, 1989, Treasury postponed the compliance date to December 1.

that buried in this bill are a number of provisions which would impose massive and unwarranted paperwork requirements on the thousands of small businesses which provide goods or services either directly or indirectly to the government.

Specifically, all firms doing business with the government would become fully regulated under the Employee Retirement Income Security Act of 1974 (ERISA). It is a complex law with significant reporting and disclosure requirements and fiduciary obligations, exposing employers who sponsor plans to significant monetary and criminal sanctions. Agencies with ERISA regulatory jurisdiction include the Departments of Treasury and Labor, the Pension Benefit Guaranty Corporation, and the Equal Employment Opportunity Commission.

ERISA information collection and paperwork burdens and compliance by employers generally have been complicated by continuous and significant legislative changes. In the fifteen years since enactment of ERISA, legislative changes were included in the Revenue Act of 1978, the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Deficit Reduction Act of 1984 (DEFRA), the Retirement Equity Act of 1984 (REA), the Single-Employer Pension Plan Amendments Act of 1986 (SEPPA), the Tax Reform Act of 1986 (TRA), the Omnibus Budget Reconciliation Act of 1987 (OBRA) and the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). All

of these legislative initiatives imposed new paperwork burdens on the small businesses affected.

Today, however, firms have a choice whether or not to set up pension plans subject to these comprehensive ERISA requirements. H.R. 43 would, however, deprive them of this choice.

As you know, Congress presently has no mechanism analogous to the regulatory and paperwork analyses performed by Executive agencies under the Regulatory Flexibility Act and the PRA by which to inform their judgment on these issues. Such an analysis may have enabled Congress to better understand the paperwork burdens on small business from Section 89.

Successful PRA Use in Environmental Regulation

In December 1989, OMB requested comments regarding an environmental reporting form to determine whether forms filed under the Resource Conservation and Recovery Act (RCRA) were sufficiently similar to the forms filed under the Superfund Amendments and Reauthorization Act (SARA) to satisfy the reporting requirements for both the Underground Storage Tank (UST) program under RCRA and the community right-to-know program under SARA. OMB examined the feasibility of substituting the Underground Storage Tank (UST) form for Title III forms, filed under the SARA.

Following the conclusion of its review process, OMB suggested to the Environmental Protection Agency that it grant an exemption for nonmanufacturers with petroleum tanks from the rule as proposed. Implementation of the exemption could reduce the burden on government and industry by eliminating duplicative paperwork and lowering costs for this small sector of the regulated community, but it in no way compromises the goals of the regulatory programs. EPA has proposed this exemption and is now taking comments. The final rule should be issued early next year.

In addition, under sections 311 and 312 of SARA, as discussed above, EPA has the opportunity to limit the amount of paperwork generated by all firms including small businesses, by setting a threshold quantity, below which no hazardous chemicals need to be reported. By proposing a 10,000 pound threshold, EPA would capture 97% of the hazardous chemicals by volume, while reducing the number of reporting facilities by 50%, and small business costs by approximately 70%. State and local governments who desire additional data below the threshold have the flexibility to request it, without unnecessarily burdening small firms with the automatic data reporting required by the rule. OMB wrote to EPA requesting that EPA raise the thresholds from the initial proposal and the Office of Advocacy strongly supported this change. These are two examples of the constructive use of

paperwork reduction principles to effectively implement environmental protection programs while at the same time minimizing burdens.

Conclusion

The important activities performed by OIRA under the Paperwork Reduction Act and the furthering of the goals underlying the PRA, are critical to the maintenance of a balanced structure of federal regulation. Therefore, we support the permanent reauthorization of the Office. The continuing efforts of this Committee to protect the interests of the small business community generally, and those of government contractors particularly, are particularly important. Your intentions highlights small business concerns with paperwork and procurement procedures, and is an important voice for continued simplification and rationalization of government imposed costs and burdens to small business.

Senator DIXON. Thank you, Mr. Swain.

Mr. Plager, are you aware of the fact that H.R. 2989 now in conference between the House and the Senate contains a provision which would specifically deny any funding to the Office of Information and Regulatory Affairs after the expiration of its current authorization on September 30 of this year?

Mr. PLAGER. I am, sir.

Senator DIXON. What is the Administration's position with respect to that provision of H.R. 2989?

Mr. PLAGER. We believe that would be a very unfortunate thing to do.

The facts of the case are this. The Paperwork Reduction Act stays in effect regardless of what happens on the reauthorization issue. That is, it is not the act that is reauthorized, but it is the funding for the Office of Information and Regulatory Affairs, part of OMB, that is subject to reauthorization.

Should the Congress fail to appropriate money to keep our program going and our staff employed, two consequences would result. One of them is that obviously, as of October 1, presumably we would shut down our efforts to do the sorts of things we have been talking about today. But at the same time, the Paperwork Act requirements would stay on the books. The consequence of that is that there would be nobody presumably available to make sensible decisions. But at the same time, new information collections that were sensible and needed could not be imposed, could not be promulgated because under the Paperwork Reduction Act, it is necessary for an information collection to have an OMB control number.

So, the result would be if the process going on in the House now over reauthorization were not concluded in time for the appropriation, if that conditional requirement remained in there and we didn't get the appropriation, the result would be we could not do the job that needs to be done, and at the same time chaos would probably occur in terms of the need for other kinds of information collection, for example, something as simple as IRS income tax return forms.

Senator DIXON. You would still have the law, but you would have no cop to enforce it is about what this amounts to.

Mr. PLAGER. Yes, that's exactly right.

Senator DIXON. Is there a public awareness of this, may I inquire? Are the small business people in our country aware of the fact that there is a conference now going on between the two houses on this issue?

If I understand, the Senate bill that we passed does not have a similar provision in it.

Mr. PLAGER. That is correct, sir.

Senator DIXON. I wonder if small businesses in the country are aware of the fact that if the Senate would yield to the House in this conference, in effect you would have a conference report on this bill that would do away with the enforcement agency on the Government Paperwork Reduction Act. Isn't that substantially true?

Mr. PLAGER. That is not only substantially true, it is completely true. It is accurate, yes, sir.

Senator DIXON. Well, I'm informed I'm not on that conference, but the conference begins next Tuesday.

Mr. PLAGER. I believe that's right, sir.

Senator DIXON. I will, of course, confer with the Chairman of this committee, the distinguished senior Senator from Arkansas, and the ranking member of my subcommittee, the distinguished senior Senator from Iowa, to see whether we can send a letter to Members of the Senate who are conferees.

But I am satisfied that small business representatives in decent numbers are in the audience and they should know that there is a very clear attempt—I am not trying to point the finger at anybody in the House, but the provision originated in the House—to do away with the enforcement agency on the Government Paperwork Reduction Act that now exists. I think perhaps some of our friends in the audience might want to talk to people in the House as well.

But you say the Administration is opposed to that position and will make its position known?

Mr. PLAGER. We have already, sir.

Senator DIXON. Have you advised leadership such as Congressman Michel in the House and others of your concerns?

Mr. PLAGER. It is my understanding that the Director has done that.

Senator DIXON. And the minority leader on the Senate side certainly, Senator Dole?

Mr. PLAGER. Yes, sir.

Senator DIXON. And I will discuss as a member of the majority leadership team my concerns with the majority leader as well, may I say.

Mr. PLAGER. Yes, sir.

Senator DIXON. But I would advise all here that there is a real and present danger that by some subterfuge—I do not mean by some calculated subterfuge, but by a kind of an indirect method—we could be in some trouble with respect to this act.

Mr. PLAGER. Yes, sir.

May I add that the Administration is ready and willing to sit down with the House and, indeed, with the Senate to discuss amendments or improvements to the Paperwork Reduction Act. We are not ready and willing to see the act get substantially gutted, or the ability of the President to review information collections under the act destroyed by amendments.

Senator DIXON. Well, I think I will make a speech on the floor about this between now and next Tuesday, when the 1990 Treasury, Postal Service, and General Government Appropriations Bill conference will begin. I will emphasize that the House version contains a provision which would deny any funding to the Office of Information and Regulatory Affairs after September 30 of this year.

Mr. PLAGER. Yes, sir.

Senator DIXON. OK, let me ask you this. You know, everybody agrees that the proliferation of requirements for all this paperwork by small businesses is a terrible problem. Do you take the position that your agency has been useful? Do you believe that you have substantially reduced paperwork requirements during the time that your agency has been in existence?

Mr. PLAGER. Yes, sir, we do indeed. I tried to suggest a couple of examples in my remarks.

Senator DIXON. Let's talk about one of them.

Mr. PLAGER. All right, sir.

Senator DIXON. When you review requirements of the IRS—and that's good [Laughter.] How does that come to your attention? That is to say, do you have complaints about some specific issue that is a problem for small businesses generally, and then you review that area? Or, does it come to your attention through your observation as an agency? How is it that you get involved with some degree of specificity in a paperwork problem?

Mr. PLAGER. Yes, sir. That's a very good question. Let me explain the process because I think it is helpful when you see the process, to see how it fits together.

Under the Paperwork Reduction Act, there is a public protection provision which says basically that any information collection requirement imposed by a Federal agency—and I might add the Congress in its wisdom extended that authority to both the executive branch agencies and to the independent agencies; that is, the review power extends to all of these agencies. Under the protection provision, any information collection that goes out must have an OMB control number, otherwise the public is perfectly free to ignore it. No penalties can be assessed.

The consequence of that is that any agency that wants to impose an information collection requirement either as part of a regulation—and many regulations require reporting as part of the compliance requirements—or as a separate information collection questionnaire, whatever, they send that to my office under what is called an SF, Standard Form, 83. And that is basically a form that says, dear OIRA, please review this under the Paperwork Reduction Act and approve it or disapprove or tell us how you feel about it. And the act says that we must look at that in terms of the criteria set out in the act which is essentially two most important ones: practical utility and is it duplicative of other collections.

Senator DIXON. Essentially, is it useful? Does it duplicate anything else?

Mr. PLAGER. Yes, sir.

And we examine this information collection request. We read it. We analyze it. We call up the agency if there is a question about it, and we say, now, tell us again exactly why do you want it. How does this give you something that you are going to use? Are you just collecting information because you are curious, or does this really tell you something you need?

The example that Frank Swain gave is an excellent example of that underground tank problem. So, the act wisely requires that notice be given to the public and that an announcement be made in the Federal Register that this is being proposed. We will then get back public comment.

At the same time, we send out copies of this proposal to various agencies that might have an interest in it. And in this case, for example, the Small Business Administration wrote us and said, hey, hold up, fellows. There is already a collection requirement out there. Why do we need two?

Senator DIXON. So, several things happen. They come to you first and you take this look at it. In addition to that, there is the Register notice that gives people an opportunity to object. You look at their objections. Also, other agencies can have their play, and that would be brought to your attention. So, there is a variety of different ways: Your own impression, what other agencies bring to you, what the public brings to you. And all these are at play.

Mr. PLAGER. Yes, sir.

Senator DIXON. And if I understand this—and this is an oversimplification—in the end every one of these things has to have your good housekeeping seal of approval on it before it goes out.

Mr. PLAGER. Yes, sir.

Senator DIXON. So, there is a useful way in this central agency to try to protect the small business interests out there from all this hodgepodge and proliferation and all these goofy things. A lot of times we intend and mean well about it when we do it.

You know, you are talking to a Chairman of a major Subcommittee of the Armed Services Committee. My friend, Dr. Burman, talking about procurement, we are always climbing all over you on procurement. And we see all kinds of bad things out there, may I say. And then we are anxious to address it. And I suppose all that multiplies your problems as well. I mean, I hear that a lot on the procurement thing, and I understand it.

Mr. PLAGER. Let me add if I may, Mr. Chairman, on the procurement side, we work obviously very closely with Allan Burman and his staff, and they are marvelous. And we lean very heavily on them for the procurement regulations, procurement paperwork requirements, so that we ourselves do not end up duplicating responsibilities. In effect, we are guided very heavily by the work of OFPP in the way in which we respond to information collections on the procurement side because they are really the experts on that. So, we call upon, as we do with the Small Business Administration, the advice and counsel of others working in the field.

And that would not happen but for the fact that there is a central office—in this case it happens to be OIRA—able to look across the Government and pull everybody together and deal with these kinds of specific cases.

Senator DIXON. Do you think this works, Mr. Swain? Does your agency, the Small Business Administration, really believe this is not just another bureaucracy with a bunch of people in there getting into everybody's hair? Is Mr. Plager's shop doing a job that is useful to small business concerns in the country in your view?

Mr. SWAIN. Well, Mr. Chairman, indeed, they have gotten into our hair——

Senator DIXON. You can talk to me privately if you don't want to talk now. [Laughter.]

Mr. SWAIN. They have gotten into our hair from time to time. We do surveys of how many small businesses have this kind of plan or this sort of situation, and we have to submit our forms over there. In most cases, they have some suggested changes. And I have got to say that the questions they ask are usually good. The points they raise are usually valid. If we don't agree with them, we fight it out to a draw. But they are sort of like the 600-pound gorilla: They have the last word on it.

Senator DIXON. Do you think that they earn their keep? That is to say, if I was the public arguing about this, is Mr. Plager's shop with all the people that work in it worth what we pay for it in the sense of the bottom line? Do you think it reduces paperwork enough in the long term that it actually saves the small business community substantial money against its cost?

Mr. SWAIN. I think they easily pass the cost-benefit test, Mr. Chairman. I do not know how many—it is my impression that OIRA does not have a tremendous number of people who like Federal standards, but if they have 40 or 50 or 60 people, and they save just that tank reporting requirement——

Senator DIXON. If they have only 40 or 50 or 60 people, we probably ought to give them a medal. I did not know there were many agencies around that had that few.

Mr. PLAGER. That's all we have.

Senator DIXON. But good.

And you believe they serve a useful purpose.

Mr. SWAIN. I do.

Senator DIXON. Do you, Dr. Burman?

Dr. BURMAN. Absolutely. They certainly do.

Mr. PLAGER. I might add we can afford to pay that 40, 50, 60 people very low salaries because they are never allowed to go home, so they can't spend their money. [Laughter.]

Senator DIXON. Now, I have not had this brought to me directly in the case of some particular, specific case, but there are all kinds of rumors out there mostly emanating, frankly, from the House—I have not heard that much in the Senate that way—that somehow this agency is surreptitiously being used to kind of kill useful social programs that protect people. Do you understand? I hear that.

Have you ever either been instructed by anybody to do that? Or have you ever had it called to your attention—you know, people around here saying I don't like this program. It's one of these goofy social programs. Let's kill it here in OIRA.

Mr. PLAGER. I can honestly say to you, sir, that while I do not have knowledge of the early years of OIRA because——

Senator DIXON. How long have you been there?

Mr. PLAGER. I have been there only 1 year. I have been in OMB 2 years. My first year was on the budget side.

But in the year that I have been at OIRA, I have never found myself in a position where anyone even suggested that we do that sort of skulduggery.

I testified actually for about 4½ hours before the House Committee that is particularly concerned about this issue a month or so ago. And they had a lot of questions that centered on that idea, but they almost all were focused on a handful of specific cases that occurred during the period 1979, 1981, 1982, 1983. They are largely history. They are largely facts that people dispute one way or the other. And my answer in most cases, frankly, was I don't know the facts. I'll be glad to go back and review them again. But they have been gone over time and time again.

I think people are not honestly looking at what has evolved over time from an effort initially to try to figure out how to get control over this Federal bureaucracy to what is now I think a fairly well-organized, quite open, quite public process—we put a lot of things

on the public record now. That honestly was not done before and perhaps should have been, but it took a while to work these things out. And I think many of these criticisms are misplaced and, frankly, not understood.

One of the important points, I think awfully important points, is the one that comes again out of that one little illustration, but we have a lot of them, about the tanks. And that is, our job is not to keep Federal agencies from getting information. That is not our job at all. Our job is to help them get the information they need and to avoid getting information they do not need because they either already have it or there is no justified reason to have it.

Senator DIXON. Is it your shop that tries to help simplify some of this stuff?

Mr. PLAGER. Yes, sir.

Senator DIXON. Dr. Burman, I do not mean this critically of you as an individual.

I happen to represent a State that does not have any big aircraft companies. We are not shipbuilders, things like that. We are mostly subcontractors. You know, McDonnell Douglas is in St. Louis, not in East St. Louis, IL, and that sort of thing. So, our folks are all subcontractors, and they are mostly small business people. And when I go into these places as Chairman of the Subcommittee of the Armed Services Committee that has 38 percent of the military budget—the Subcommittee on Readiness, Sustainability and Support—and say why don't you try to get some defense business, get Illinois more defense dollars, they say, "Oh, man. They send us all these papers. We go goofy. We can't do it."

Now, do you folks ever talk about that aspect, how to make it simpler for small business people so they can sell a little widget of some sort with a couple of wires sticking out of it without hiring six people to figure out how to do it?

Dr. BURMAN. We clearly do, and we have the same frustrations that they have because one of our tasks is to try to simplify this process. And we have been looking at it for a long time. And we look at every rule from that perspective as well. Do we really need this information? Couldn't we do it in a less burdensome manner?

And, as I suggested in my testimony, if we can come up with this new piece of legislation on commercial products, that will make it a lot simpler for people to want to do business with the Government.

Senator DIXON. Yes, that would be delightful.

Dr. BURMAN. So, that is something that we hope will have a significant effect on that problem.

Senator DIXON. Congress passed amendments, Mr. Plager, to PRA in 1986 to help deal with the earlier concerns we spoke of. Is that right? Have they had an effect?

Mr. PLAGER. In the reauthorization in 1986, a number of these same concerns were expressed. We're some sort of secret society. We are a conduit for businesses to go through the back door, and there is excessive delay and we bottle things up. And there was a good bit of discussion about that. To what extent those complaints could be validated factually, again I think people argue about that. I was not there. I do not know.

But I think several constructive changes were made in the way OIRA works, and those are very much in place now, and we adhere to them very closely.

For example, with regard to this conduit idea, the notion that we provide a back door into the system for business, we are very careful about that. As soon as a rule comes over for our review, my staff is prohibited from talking to anyone outside the Government with regard to that rule. Myself and my deputy can talk to someone who wants to discuss that rule or that paperwork collection with us, but the agencies are informed ahead of time that they can tell us if they want to be present, and we make a public record of that kind of meeting.

With regard to the delay process, Director Darman and I have worked very, very hard in the past months that the director has been with us and before that to clean out any backlog. We do not use delay as a policy technique for dealing with an agency over a paperwork collection or a rule that we don't like. And we force things to decision. And that is what we should be doing.

And with regard to this concern that we are somehow a secret society, we now put on the record the document that comes over from the agency initially. It goes into a public file at the conclusion of the process when the final rule gets published, and a copy of the final rule and any copies of documents, written letters or official correspondence between my office and the agency. So, anyone can come in. The public can come in, compare what came over, what went out and see exactly what changes occurred as a consequence of this OIRA review process.

And that came out of the 1986 amendment process. We think we have dealt with a lot of these concerns.

Senator DIXON. Mr. Swain, you mentioned Section 89 in the course of your testimony. I think it was you who mentioned it.

Mr. SWAIN. Yes, sir.

Senator DIXON. We have had a hearing here in our full Committee, Chaired by the distinguished senior Senator from Arkansas. I myself have voted on one occasion to repeal Section 89 on the floor of the Senate. I think we ought to probably start all over.

At the same time, I would make this observation. There is probably a good intention in what was done there, and if we are really sending out books several inches thick to people to explain what they should do with it, obviously we have a problem.

But are you folks all talking about that now? What is being done at the regulatory end of this thing with the agencies to address Section 89, because I do not know where we are going with this? I voted to repeal it once. Whether we are going to get another shot at that, I don't know.

Mr. SWAIN. Well, there are two or three things going on, Mr. Chairman. There are two things going on legislatively. First of all, both the House and the Senate have passed legislation that would deny funding—it is probably the same Treasury conference that you mentioned earlier in relation to OIRA—would deny funding to IRS for purposes of enforcing Section 89. I believe the rationale is that the Congress is actively considering a substantive rewrite of Section 89. So, why should they go ahead and start enforcing what

is on the books when it is inevitably going to change? That's in conference.

Senator DIXON. It might be this bill, as a matter of fact. That might be where I cast that vote. I know that I voted at least once on it.

Mr. SWAIN. Well, there have been several roll call votes on repeal of Section 89. It has not been repealed by either the House or the Senate, but I believe both the House and Senate—I know the Senate has passed a bill that significantly makes substantive changes in the law. The House has not yet gotten to that. It is still coming through——

Senator DIXON. But are you folks working on things to reduce the paperwork requirements, and so forth, in connection with that while we fiddle around and figure out what we are ultimately going to do?

Mr. SWAIN. Mr. Plager and I have personally discussed Section 89 as long ago as last January or February when it first came out. And I think that both his office and my office have put pressure on the IRS and the Treasury to reduce as much as they can, given the present law, the paperwork.

The problem is that the present law really needs to be changed. There is not as much discretion on paperwork on this as there might be on some other things.

Senator DIXON. Well, let me just say I observe that the distinguished senior Senator from Wisconsin is here and may have some comments he wants to make. We thank him for attending the hearing.

But I would want to conclude by saying—and I have no further questions for any of you—that it is my impression that you do serve a useful public service. And frankly, when I go home to town hall meetings and tell folks what I do and tell them the Subcommittees I chair, and I say one is on Government paperwork reduction, people fall in the aisles laughing. [Laughter.]

And the perception out there is we are not doing anything about it. So, if anybody in this Government is doing something to reduce Government paperwork, I say bless you and let's do more to support you.

And I want to again reiterate that I am going to make a speech between now and next Tuesday about this conference on the fiscal year 1990 Treasury, Postal Service and General Government Appropriations Bill, H.R. 2989, which would specifically deny any funding to the Office of Information and Regulatory Affairs to carry out your duties as the cop to stop this outrageous crime of proliferation of Government paperwork. It is not as important as the war against drugs, but it certainly serves a useful purpose, and I am going to do all I can to help you.

I am delighted to have my friend from Wisconsin here.

STATEMENT OF HON. ROBERT W. KASTEN, JR., A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KASTEN. Mr. Chairman, I thank you.

Maybe I am going to repeat the question, but is the Small Business Administration—or let me do OMB first I guess. It doesn't

make any difference. But, Mr. Plager, is the Office of Management and Budget, your department, Information and Regulatory Affairs, in favor of repeal of Section 89?

Mr. PLAGER. We are certainly in favor of——

Senator KASTEN. I do not mean reform. I said repeal of Section 89.

Mr. PLAGER. I do not know, sir, whether the Administration has taken a position on repeal of Section 89.

Senator KASTEN. Do you have a position, Dr. Burman? You are still OMB. Is that right?

Dr. BURMAN. I am, but that's not an area that I would have a comment on.

Senator KASTEN. Are you for repeal or reform, Mr. Plager?

Mr. PLAGER. My office, sir——

Senator KASTEN. Would more paperwork be created if we reformed it, or would we better off if we repealed it in terms of volume of paperwork which is the—this is the Paperwork Reduction Act we are talking about.

Mr. PLAGER. I understand the question, sir.

I do not want to speak out of turn on behalf of the Administration on whether the Administration supports total repeal because I do not have that authority. I can tell you that from the viewpoint of my office, and with the help of the Small Business Administration, Mr. Swain, we protested very strongly at the excessive paperwork burden required by the existing Section 89.

Senator KASTEN. You are not answering my question.

Mr. Swain, are you in favor of repeal of Section 89? Is the Small Business Administration?

Mr. SWAIN. Personally, Senator, Frank Swain is in favor of repeal. Institutionally I do not believe the SBA has taken a formal position.

Senator KASTEN. Have you all, in the process of looking at Section 89, determined the balance or the revenue that is coming in as opposed to the cost of paperwork? Mr. Plager, have you reviewed the cost to America, particularly small business, of going through the tests in order to prove that your benefit plan is not discriminatory?

Mr. PLAGER. Under Section 89, I think we have, sir. I think that those——

Senator KASTEN. How much do you estimate? Do you agree with the estimate of Norm Ture's group who did an economic study? I think it is the Institute on Research on Economics of Taxation. They say it is going to cost $4 billion for the United States of America in legal fees, accounting fees, and consulting fees. Do you agree with that?

Mr. PLAGER. I would not be at all surprised if that weren't accurate, sir. I do not have before me the actual analyses that we have made. I would be more than glad to provide those to you and for the record for this hearing. But that probably would not surprise me if that number was accurate.

[Material follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 5 1989

Honorable David Nummy
Assistant Secretary for Management
Department of Treasury
Washington, D.C. 20220

Dear Mr. Nummy:

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 35), we are commenting on the collection of information requirements contained in the Notice of Proposed Rulemaking (NRPM), "Benefits Provided Under Certain Employee Benefit Plans," published on March 7, 1989, by the Treasury Department. Your office submitted these proposed paperwork requirements to us on February 3, 1989, for our review under Section 3504(h) of the PRA. This letter transmits our comments on the proposed paperwork requirements.

The PRA requires that agencies justify, both publicly and to the Office of Management and Budget (OMB), that proposed collections of information meet the standards of need and practical utility mandated in Section 3508. Under Section 3504(h), the Director of OMB may file comments in the public record on collections of information contained in proposed rules. OMB may disapprove collections of information contained in final rules if the agency did not respond reasonably to OMB's comments. The implementing regulations at 5 CFR 1320.4(c)(1) state that OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that an agency exercises discretion in its implementation.

On the basis of the information provided by the Department and the public (see OMB paperwork docket 1545-1101), we have determined that the information collections contained in the NPRM do not meet the requirements of the PRA. The required testing and recordkeeping are so burdensome as to raise serious questions that the information collection requirements will be actually counterproductive in achieving the nondiscrimination objectives of Section 89. The difficulty of complying with the information requirements may encourage employers to significantly reduce employee access to health care and other employee benefits. The heavy information burden placed on employers also may reduce the anticipated

additional revenue to be obtained from the taxation of excess benefits received by highly compensated employees.

The information requirements in the NPRM include eligibility and benefits tests requiring data for the determination of: (1) the income of employees participating in specific benefit plans; (2) whether plans are of the same type; (3) a value for each plan; (4) whether an employee is eligible for a plan falling within the plans as grouped for a specific test; (5) whether an employee actually participates in a plan; and (6) the number of hours worked by employees who are not clearly full time. For firms with more than one establishment and which meet the requirements for classification in more than one industry, the effect of alternative groupings of employees for purposes of testing also needs to be studied. Although Congress and the Internal Revenue Service (IRS) attempted to simplify the tests required of any one employer, the variety of tests and employment situations suggests that the testing activity will be much more complex than foreseen.

If test results show that certain plans do not pass the requirements for nondiscrimation, then the amount of excess benefits must be calculated for each highly compensated employee and added to the employee's taxable income. Changes in plans and employee participation during the year may require reapplication of the tests to determine whether the changes have had the desired impact and that the plans meet the nondiscrimination tests. Some plan changes are within the control of the employer, and some may not be, as when a health insurance carrier adjusts payments or benefits during the year to control costs. Small employers may have insufficient bargaining power to avoid plans with such requirements and thus will be required to conduct additional, ongoing tests.

Written comments received in the paperwork record to date from employers, plan administrators, and consultants who are trying to apply the proposed regulation, indicate that IRS's average burden estimate of 10 hours of paperwork per year is substantially underestimated. The U.S. Chamber of Commerce and the Business Council on the Reduction of Paperwork estimate that small businesses with under 100 employees that are subject to Section 89 will take as much as 300 hours to comply with the information collection. A former Assistant Secretary of the Treasury for Tax Policy has testified that 40 hours is the <u>minimum</u> burden for compliance and that the average burden is higher. Another consultant writes that it took him over 20 hours to read the regulations just once. A city administrator writes that he has attended three seminars on Section 89 requirements and none of the three provided the same interpretation of the

requirements. Numerous letters refer to the large costs of compliance and some relay accounts of specific businesses that have dropped some or all of their health benefit coverage in order to avoid the administrative costs imposed by the testing procedures required by the proposed rule.

The estimated dollar costs of compliance with the testing and other information collection requirements of the nondiscrimination regulation have been conservatively estimated by Reed Stiger of the American Institute of Public Accountants at $270 million a year (Testimony, Senate Committee on Small Business, April 13, 1989). This compares with revenue estimates for Section 89 of $72 million in FY 1988, $120 million in FY 1989, $140 million in FY 1990, and $154 million in FY 1991. These estimates indicate that the cost to employers of the information requirements imposed by Section 89 could well exceed the revenue estimates unless employers cut their costs by streamlining their benefit coverage.

Hence, we believe the total actual paperwork burden of Section 89 is likely to be 69 million hours, rather than 9 million hours as estimated by the IRS, and have adjusted the burden estimate. We welcome any information from the Department that would enable us to further refine the paperwork burden for this rule.

Accordingly, OMB will review closely the information collections proposed in the final regulations for Section 89 to ensure conformance with the PRA. Given the burdensome nature of the requirements, there will be a strong presumption for the disapproval of all testing and other information requirements not specifically required by statute.

The substantial negative public comment on the proposed IRS Section 89 regulation and the many bills introduced in Congress to repeal or modify Section 89 make it likely that there will be a substantial modification in testing and other information requirements before full implementation of the current law and proposed regulations is accomplished. It is expected that any such modifications will result in a decrease in the burden of future information collection requirements. However, we are also concerned about the information burden on business and the disruption of employee benefits by businesses currently trying to comply with the draft rule. Much of the effort expended to date will prove unnecessary if the law is changed. Therefore, we are instructing the Department to take all possible action to minimize the burden, including requesting the Congress to repeal or delay implementation of Section 89 information requirements, until a decision is reached about requirements for demonstrating compliance with nondiscrimination

requirements. A delay in the implementation of Section 89 will save employers from the possible further waste of resources which would otherwise occur.

Sincerely,

Jay Plager
Administrator
Office of Information
and Regulatory Affairs

Senator KASTEN. Mr. Swain, do you for the Small Business Administration believe that that cost to business is accurate, $4 billion?

Mr. SWAIN. I suspect that Professor Ture's estimate is perhaps an underestimate. We wrote OMB and Treasury in May, and our own estimate is more in the range of $7 billion. And I would be happy to supply a copy of that letter to the subcommittee. I think it is a tremendous potential burden.

Senator KASTEN. I thank you. And without objection, Mr. Chairman, if that letter, if it were supplied, could be made part of the record at this point, I would appreciate it.

Senator DIXON. Well, there is no objection to that at all. And if Mr. Swain will send the Chairman a letter with a copy to the distinguished senior Senator from Wisconsin, it will be reproduced in the record.

[Material follows:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

May 4, 1989

Honorable Jay Plager
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Old Executive Office Building
Room 246
Washington, D.C. 20503

Dear Mr. Plager:

I am writing to request that the Internal Revenue Service (IRS) modify and republish proposed regulation under Internal Revenue Code Section 89. The currently proposed rule vastly underestimates the paperwork and reporting burden of this law.

The policy goal of Section 89 of the 1986 Internal Revenue Code is to promote more equitable distribution of health (and life insurance) benefits, where the firm and its employees receive tax subsidies for the provision of those benefits. Section 89 sets the parameters for treatment of employer-sponsored fringe benefit plans under the Code to ensure that the tax subsidy for encouraging such plans is efficiently used, that is, that tax-subsidized benefits are equitably distributed and relatively close in value. In order to ensure compliance with Section 89 a number of collection requirements have been imposed on employers. This letter objects to IRS' estimates of burden hours imposed and asserts that the actual burden hours are many times more than IRS estimates.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), requires that the Internal Revenue Service publish and provide to the Director of the Office of Management and Budget an estimate of the compliance burden, both cost and time, that will result from the proposed regulations. Our comments, based on information derived from the Small Business Data Base, maintained by the Office of Advocacy of the Small Business Administration will demonstrate that the IRS has greatly underestimated the number of recordkeepers necessary to track information, the number of outside consultants that small firms will have to hire, and the number of hours that employers and the consultants they hire will have to spend to insure Section 89 compliance.

Our estimates of paperwork burden and compliance costs of Section 89 will address only the cost of compliance pertaining to health

benefits. Other fringe benefits, including life insurance and flexible spending accounts, undoubtedly will increase the burden of compliance and are not considered in our estimates.

Employers who offer health benefits are required to gather data about their firms, workforce characteristics, compensation and each health benefit option, including sworn statements as to the existence and content of spousal coverage elsewhere. These data are used for a complex set of tests to evaluate compliance with Section 89. If the benefit plan does not comply with section 89 requirements, the excess benefits must be shown on the W-2 forms of the highly compensated employees. Firms must also meet certain "qualification requirements" set forth in Section 89(k).

Recordkeepers

The IRS estimates that the annual recordkeeping and reporting burden that will result from the proposed regulations is 9,000,000 hours. 54 Fed. Reg. 9461 (March 7, 1989). This estimate is based on the assumption of 750,000 recordkeepers. Our data on the number of enterprises with employees in the United States, (1986) which does not include the self-employed, totals 3,850,221. Fifty-six percent of U.S. firms offer health insurance. Section 89 requires some recordkeeping functions for each firm with health benefits under Section 89. Therefore, we estimate the number of firms of whom compliance would be required is 2,122,513. We note that any firm that does not presently offer health care coverage may offer it during the year, which would increase the number of recordkeepers.

Compliance Cost

For this analysis, we have estimated costs based on employers with 10 - 24 employees. We have assumed that firms in this employment size bracket will have an employee, part-time usually, specializing in administrative recordkeeping. Smaller firms with fewer than 10 employees will face higher compliance costs since more owners' time will be involved, due to a lesser likelihood of a specialized recordkeeper, and more outside consultants will be utilized. Larger firms also will face higher costs of compliance with respect to those tests which require increasing compliance time as a function of the complexity of the organization and benefit plans, or the number of employees. Therefore, our estimates, based on the cost of compliance for firms with 10-24 employees, will underestimate total burdens because we have estimated costs for what we believe is the lowest cost size group, and because we have used a low estimate for the total number of firms in the universe. Overall, compliance burdens as determined by this office are considerably above those calculated by the Internal Revenue Service.

Our analysis of Section 89 data and testing requirements presumes that firms will require both outside consultants and internal recordkeepers. Many very small firms do not normally use

professional services, other than independent insurance agents, for health benefits. The complexity of data-gathering and testing, and the legal ramifications of noncompliance with all of Section 89, would require outside consultants, such as attorneys, accountants, and benefit consultants. We conservatively assess their time at approximately $75 per hour.

Because workforce characteristics, i.e. part-time workers, level of employee enrollment and choice of options in health care plans differ among employers, outside consultants will have to closely examine the data collected by employers and run compliance tests for each client firm. We estimate that consultants will spend approximately 31 hours on each plan for a total of $2325 in outside consultant fees per employer.[1]

In addition, we estimated that firms with 10-24 employees will expend about 41 hours internally at a cost of $30 per hour for a cost of $1230. Data required by Section 89 for determining compliance will compel internal collection of information by employers. Each employer must learn about the regulation, survey employees and establish internal communication systems, and review and input data from employee records and insurance records. We also estimated time for employees to complete sworn statements on the status of spousal coverage, and management time in administering the sworn statements.[2]

Once the tests are run and compliance is evaluated, excess benefits must be affixed to the highly compensated employee(s) W-2 forms. Our analysis has also allotted compliance time for reevaluating testing and data.

Approximately 406,048 firms (78 percent of firms in this category) with 10-24 employees have health insurance. Burden hours for this set would be 72 hours per firm (31 hours of consultant time at $75 per hour and 41 hours of employers time at $30 per hour), or 29.235 million hours for all firms of this set. The cost of compliance would total $3555 per firm, or $ 1.443 billion for all firms of this set. Assuming that costs

---

[1]Time breakdown for professional services includes eight hours for review of data, five hours for testing and review of testing results, eight hours for legal review, ten hours accountant time for assessments of impact on highly compensated employees and W-2 forms.

[2]Time breakdown for internal time includes 12 hours for sworn statement completion by employees, five hours for administration of sworn statement, including communication to employees and collection, six hours for collection and review of data and insurance information, eight hours for in-house management review, two hours for W-2 changes, eight hours for reevaluation of data, testing, and results of professional services, as well as communication to employees.

per firm for firms in other size groups are the same (which, as discussed above, they are not), we estimate that a minimal estimate of overall burden is $7.543 billion

Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA), 5 U.S.C. §601 et seq., requires the Internal Revenue Service to perform a regulatory flexibility analysis to ascertain the cost of compliance with proposed regulations on small business and, if possible reduce unnecessary burdens. The Regulatory Flexibility Act only applies to legislative (or substantive) rules and exempts interpretative rules from analysis. In this instance the IRS incorrectly construed the proposed regulation as interpretative and, therefore, did not prepare a regulatory flexibility analysis as required by the RFA.

Section 89 proposed regulations are not merely interpretive but result from legislative-like authority delegated by Congress through the Tax Reform Act. For example Prop. Reg. ss1.89(k)-1, Q&A 3(d)(4), 4(e), 5(g) (4), 6(f), which defers the effective date of several qualification requirements; Prop. Reg. ss1.89(a)-1, Q&A 4(d)(1) that statements regarding family status be made under penalty of perjury; and Prop. Reg. ss1.89(a)-1, Q&A 4(d)(2), that treats certain benefits attributable to salary reduction as not available to any nonhighly compensated employees all demonstrate the substantial discretion given to the IRS in its rulemaking activities. Therefore, we believe that the proposed rule is not interpretative and that IRS is required to prepare and publish a regulatory flexibility analysis. It is incumbent upon the IRS to properly characterize its proposed rule as other than interpretative and to publish a final regulatory flexibility analysis with the final rule.

A regulatory flexibility analysis would have been of great assistance to the Office of Management and Budget and the public in assessing the real burdens imposed by the Section 89 regulations.

Conclusion

The estimates of paperwork and recordkeeping burdens prepared by this Office are many times than those of the Internal Revenue Service. We believe that the IRS should republish this rule with a more reasonable approximation of paperwork compliance burden, as well as a regulatory flexibility analysis, in order to allow for more proper review.

Finally, I note that both the House and Senate tax writing committees are considering major changes to Section 89, and the Administration has stated its agreement that change is necessary. Notwithstanding our specific comments in this letter and the welcome announcement of Secretary Brady this week on postponement of certain rules until October 1, Treasury and OMB should

seriously consider withholding approval of this particular proposal given the great likelihood the law will soon be significantly changed and simplified.

Very truly yours,

Frank S. Swain

Frank S. Swain
Chief Counsel for Advocacy

	Employment Size of Firm					
	Total	1-9	10-24	25-99	100-499	500+
Number of Enterprises*	3,805,368	2,830,231	520,574	347,050	72,302	15,221
Number of Firms With Health Benefits*	2,122,813	1,311,102	406,049	310,206	70,856	15,221

* Data on number of firms (private, non-farm) and firm size categories from the U.S. Small Business Administration Office of Advocacy, Small Business Data Base--U.S. Establishment and Enterprise Microdata File (USEEM) 1986.

*The proportion of firms with health insurance in each size category, used to calculate the number of firms with health insurance, was based on a study prepared for the Office of Advocacy, Health Insurance Coverage Costs in Small and Large Businesses, ICF, Inc., April 15, 1987.

Senator KASTEN. Now, the Treasury estimates that we are going to be able to come in and have additional revenue of about $120 million to $130 million. That does not count the people that we are going to hire at Treasury to read the forms that people will be sending in. I think it is a good couple of corridors over there at Treasury that we would have to add on in order to have somebody reading this stuff that we would be producing in order to make sure that the tests were successfully completed.

What kind of a cost—you are supposed to be in the cost-benefit business. What kind of a cost-benefit do you or can you relate to $4 billion cost and $120 million coming in? And why then is it that you can't take a position on Section 89? First of all, answer the cost-benefit question.

Mr. PLAGER. Yes. The cost, as you describe it and as any reasonable person would respond, necessarily the cost-benefit is totally out of whack. Nobody should support such a paperwork requirement. I do not support such a paperwork requirement. And I personally would be opposed to the imposition of that paperwork requirement.

The only point I was making earlier, Senator, is that I do not know what the administration's official position is.

Senator KASTEN. Well, I do. It's mushy just like yours is. [Laughter.]

And that is the problem. And I am just trying to pin everybody down a little bit more today, and we are going to keep working at this. And eventually we are going to start to have straight answers.

Mr. PLAGER. I would personally support your effort to get us pinned down on that issue. [Laughter.]

Senator KASTEN. We'll, see. We are already making progress. [Laughter.]

Mr. PLAGER. And I'll be glad to go back and see what I can do.

Senator KASTEN. Let me just conclude, Mr. Chairman. I just want to make a statement that this isn't just a paperwork question—Section 89. It is also a health insurance question. And I just had a week of hearings on Section 89 in Wisconsin, and 80 percent of the businesses in Wisconsin are 20 employees or less, which is a number that I am sure Mr. Swain would agree that is kind of about the way America is. And more than half of those people cannot afford the legal and the accounting burden for Section 89 even though they just have one plan and they offer it to all of their employees. It's the same plan. But they cannot afford to go through the tests.

What they are going to do is drop their health insurance coverage. They are going to gross up the salaries of the top executives and drop the coverage for everybody else. That is what is going to happen at a time when we in the United States of America and we in Washington, whether we are at Small Business or OMB or the Senate, are saying we want more people covered by private health insurance in order to deal with the problem of under-insured and uninsured people across America.

So, not only are we in the paperwork business and working against our goals in terms of paperwork, but we are also working against the basic policies that we have in terms of health coverage in the private sector. And we are going to have I do not know how many thousands of people who now have insurance go without in-

surance. Because plans will be cancelled because they cannot afford to prove that the plan does not discriminate, even though they just have one plan. Because it is not just that you offer the plan, the people have to accept it. In other words, if you have a lot of employees who have not accepted it, your health insurance, who are on their spouse's health insurance plan because it is different, if you don't reach that 70 percent or whatever level, you are not in compliance. So, we are making two mistakes here.

And I hope that we can pin down this administration and aggressively work to repeal Section 89.

Mr. PLAGER. Senator, if I might just add that I think IRS made a yeoman effort to limit their regulatory requirements to what the statute called for. And I think it is the statute that is basically driving that information collection.

Senator DIXON. Well, I thank you, Mr. Plager, you, Dr. Burman, and you, Mr. Swain. I thank my friend, the distinguished Senator from Wisconsin. And we will excuse you now and take the last panel, panel No. 3. Thank you very much, gentlemen.

The third panel will be Mr. Leo G. Lauzen, chairman of Comprehensive Accounting Corp. of Aurora, IL; Ms. Denise Norberg, Gust A. Norberg & Son, Inc. of Chicago, representing the American Subcontractors Association and the U.S. Chamber of Commerce; and Ms. Elaine Acevedo, director of Government affairs, Florists' Transworld Delivery, Washington, D.C., representing the Small Business Legislative Council and National Small Business United. And I thank you all for being here today. And we welcome you.

I particularly apologize to Mr. Lauzen because of the fact that in the closing days of the last part of the session before our August recess, we had to postpone this hearing until now. I hope it was not a great inconvenience to any of you. We thank you for coming.

And, Mr. Lauzen, we are delighted to hear from you today in connection with our concerns about the Government Paperwork Reduction Act.

STATEMENT OF LEO G. LAUZEN, CHAIRMAN, COMPREHENSIVE ACCOUNTING CORP., AURORA, IL

Mr. LAUZEN. Thank you. I appreciate the opportunity to be here today and hope that my testimony will help to reduce the burden on small businesses caused by difficult to understand Government regulations.

I am chairman and founder of Comprehensive Accounting Corporation. My company has approximately 250 franchised offices coast to coast providing accounting business consulting and tax services to nearly 20,000 small and medium sized businesses.

In an era that seems to focus on big business, it is refreshing to note that small business is still a major factor in our country's economy. Unfortunately, as many of you are already aware, this triumph is also a tragedy in light of the high failure rate of small business.

I am not here to suggest that small business failure is the Government's fault. There are many reasons why businesses fail. However, we have evidence that the time and cost associated with interpreting and complying with complicated Government regula-

tions have contributed to that problem. We have found that difficult to understand regulations are not only intimidating, but they frequently divert the businessowner's attention from the essentials of managing his or her business and making that business successful. This diversion means not only time, but dollars because frequently small businesses have to pay to get professional help to comply with the regulations governing their business.

In June our company conducted a survey of our 250 franchised accounting offices regarding Government regulations. We asked have you or any of your clients ever had a problem interpreting Government regulations relating to small business. Only one person said no. Better than 99 percent said yes.

Asked what percent of your working time is spent interpreting Government regulations, some 50 percent said they spend 10 to 25 percent relating to the earlier question that was raised about costs of the burden of paperwork. Ten to 25 percent of their time, thus the time of our accounting offices in the field doing this for their clients. That is as much as one-fourth of their time that could be spent in helping their clients to better manage their businesses and thus reduce the failure rate.

Let's assume that the typical small businessowner pays the accountant about $3,000 per year, and that's about the average fee across the Nation. If we take one-fourth of that figure, we come up with $750 that it costs the average small businessowner to receive help in interpreting Government regulations. If we multiply that $750 by roughly 15 million small businesses in the United States, we get $11 billion. I think even today when we are accustomed to reading about megadollar budgets in newspapers, $11 billion is a lot of money.

Perhaps the most discouraging statistics we uncovered was when we asked have Government regulations become more or less complicated during the last 5 years. Fully 93 percent of our respondents said yes; 7 percent said they have stayed the same. No one said less complicated.

The Government has become more sympathetic to small business and its problems. Agencies, such as the Small Business Administration, especially the Chief Counsel for Advocacy, are doing an excellent job in keeping lawmakers aware of the concerns of small business and protecting their interests.

We are also aware of legislation such as the Paperwork Reduction Act of 1980, the Regulatory Flexibility Act, the Tax Reform Regulation of 1986 to help resolve these problems. Ironically and regrettably, efforts to alleviate the problem often complicate matters further.

For example, an independent survey last year showed that compliance with the new tax laws demanded more time regardless of whether the preparation of tax forms was handled internally or through outside accountants.

Our experience with difficult to understand regulations suggests two parts to the problem. First is quantity. We are imposing more and more rules, regulations and statutes on the small businessowner producing an increase in the businessowner's paperwork burden hours. We have to ask ourselves are all of these rules and regulations really necessary.

The second part of the problem is format and language of the regulations. Traditionally regulations have been written in a series of divided and subdivided sections, each identified with letters and numbers. While the original purpose may have been to aid understanding, the result is organizational overkill with frequent cross references, exceptions to the rules, endless subsections and more subsections.

In addition, the sentences are frequently complex and confusing. A businessowner has to struggle to interpret them. Some businessowners fail to comply simply because they are unable to understand what is required.

We understand that the Environmental Protection Agency has taken steps to simplify its regulatory language and has added persons with journalistic skills to its staff for this purpose. That's a great idea.

I think a part of our problem is that our regulations are more and more being written by lawyers. This might make good legal sense, but it is not good business in terms of getting the millions of nonlawyer businessowners to understand what is going on.

We recently sought to call attention to this problem by initiating our most incomprehensible Government regulation award. We asked our accountants to identify the Government regulation which they felt was the worst written and most difficult to understand.

Senator DIXON. I bet I'm going to get to hear it too. [Laughter.]

Mr. LAUZEN. You bet, but not in its entirety.

Senator DIXON. I want to hear it. I really do.

Mr. LAUZEN. All right. First prize went to Treasury regulation 31.6302(C)(1)——

Senator DIXON. Even the number is confusing. [Laughter.]

Mr. LAUZEN (continuing). Relating to the use of Government depositories in connection with taxes under the Federal Insurance Contribution Act and Income Tax Withheld. Let me read a portion.

"Except as provided in paragraph B of this section and hereinafter this subsection I, if at the close of any calendar month, the aggregate amount of undeposited taxes, as defined in paragraph A(I)(iii) of this section, is $500 or more, the employer shall deposit the undeposited taxes in a Federal Reserve bank or authorized financial institution (see subparagraph 3(iii) of this paragraph) within 15 calendar days after the close of such calendar month. However,"—[Laughter.]—"this A of subsection I shall not apply to the employer who was required to make a deposit of taxes pursuant to B of this subsection I with respect to its 8 month period which occurred during the calendar month."

Senator DIXON. And there is more?

Mr. LAUZEN. No, that's essentially it.

Senator DIXON. Well, I'll tell you one thing, Mr. Lauzen. If that doesn't get first prize, it will do until the first prize comes along. I'll tell you that. [Laughter.]

Although my friend Senator Grassley from Iowa understood every bit of it. [Laughter.]

Mr. LAUZEN. We asked our accountants to come up with some simple suggestions for improving the situation.

The first suggestion had to do with simply reducing the number of regulations which are out there, which I understand is the substance of the Paperwork Reduction Act. Toward that end, I would like to express support for PRA and its administering agency, the Office of Information and Regulatory Affairs.

Besides reducing the number of regulations, our accountants had some suggestions that dealt with their structure. Here are five rules, simple and basic as they might be.

No. 1, use simple declarative sentences. Avoid compound or complex sentences.

No. 2, keep sentences short. Two or three lines maximum.

No. 3, use short, simple words. Avoid cumbersome phrases such as "except as provided", and words such as "hereinafter."

No. 4, avoid extensive subdivisions.

No. 5, avoid cross-referencing, especially parenthetically within a single sentence.

These are simple rules, but I think you have the idea. Our intention in initiating our most incomprehensible Government award and what I hope to achieve by being here today is to draw attention to the fact that our efforts to simplify these regulations have fallen far short of success. We have a long way to go.

We are pleased that you are reviewing this problem. We would like to cooperate with you in any way you might find helpful. Thank you.

[The prepared statement of Mr. Lauzen follows:]

STATEMENT OF LEO G. LAUZEN, CHAIRMAN
COMPREHENSIVE ACCOUNTING CORPORATION

I APPRECIATE THE OPPORTUNITY TO BE HERE TODAY AND HOPE THAT MY TESTIMONY WILL HELP REDUCE THE BURDEN ON SMALL BUSINESSES CAUSED BY CUMBERSOME AND DIFFICULT-TO-UNDERSTAND GOVERNMENT REGULATIONS.

WHILE I AGREE THAT REGULATIONS GOVERNING THE CONDUCT OF BUSINESS ARE NOT ONLY DESIRABLE BUT NECESSARY, I WOULD LIKE TO SUGGEST THAT THE COMPLEXITY OF DECIPHERING AND COMPLYING WITH MANY OF THESE REGULATIONS IS STIFLING THE ENTREPRENEURIAL SPIRIT THAT HAS BEEN THE BACKBONE OF OUR COUNTRY.

I SPEAK TO YOU AS THE CHAIRMAN OF A COMPANY I FOUNDED MORE THAN FORTY YEARS AGO TO PROVIDE ACCOUNTING SERVICES FOR SMALL TO MEDIUM-SIZED BUSINESSES. OUR FIRM, COMPREHENSIVE ACCOUNTING CORPORATION, IS TODAY THE LARGEST MONTHLY ACCOUNTING SERVICE OF ITS TYPE IN THE COUNTRY. WE HAVE APPROXIMATELY 250 FRANCHISED OFFICES, COAST TO COAST, PROVIDING ACCOUNTING, BUSINESS CONSULTING AND TAX SERVICE MONTHLY TO NEARLY 20,000 SMALL AND MEDIUM-SIZED BUSINESSES.

MY TESTIMONY TODAY TO MEMBERS OF THIS SUBCOMMITTEE REFLECTS SOME OF THE PROBLEMS WE HAVE WITNESSED AND SHARED WITH OUR MANY CLIENTS THROUGH THE YEARS.

WE HAVE SEEN THE IMPACT OF MOUNTING GOVERNMENT-GENERATED PAPERWORK AND HAVE SEEN THE FRUSTRATION IT BRINGS TO THE INDUSTRIOUS MEN AND WOMEN TRYING TO PURSUE THEIR OWN AMERICAN DREAM. IT IS DISHEARTENING WHEN PEOPLE WILLING TO WORK HARD AND ACCEPT THE CHALLENGES OF OPERATING A BUSINESS BECOME DISCOURAGED BECAUSE OF BURDENS LEVIED ON THEM BY A GOVERNMENT THAT ON THE ONE HAND, ENCOURAGES FREE ENTERPRISE AND INDEPENDENCE, BUT ON THE OTHER, INADVERTENTLY PUTS OBSTACLES IN THE PATH OF THOSE ATTEMPTING TO PURSUE IT.

I KNOW THAT ALL OF YOU ARE AWARE OF THE IMPORTANCE OF SMALL BUSINESS IN THIS COUNTRY. SOME 90 PERCENT OF THE 17 MILLION BUSINESSES IN THE UNITED STATES ARE SMALL BUSINESSES WITH ANNUAL SALES OF $300,000 OR LESS. SMALL BUSINESSES CREATE 50 TO 60 PERCENT OF ALL NEW JOBS EACH YEAR. THEY ACCOUNT FOR NEARLY ONE HALF OF OUR NATION'S PRIVATE SECTOR WORK FORCE, AND ABOUT 40 PERCENT OF OUR GROSS NATIONAL PRODUCT.

IN AN ERA THAT SEEMS TO FOCUS ON BIG BUSINESS AND THE MERGERS THAT FREQUENTLY DIMINISH THE CONTRIBUTION FROM INDIVIDUAL EMPLOYEES, IT IS REFRESHING TO NOTE THAT SMALL, INDEPENDENT BUSINESS OWNERS ARE STILL A MAJOR FACTOR IN OUR COUNTRY'S ECONOMY. UNFORTUNATELY, THIS TRIUMPH CAN BE VIEWED AS A TRAGEDY IN LIGHT OF THE HIGH FAILURE RATE OF SMALL BUSINESSES. WITHIN FOUR YEARS OF STARTING, 50 PERCENT OF ALL SMALL BUSINESSES ARE NO LONGER IN BUSINESS. WITHIN FIVE YEARS, THE NUMBER JUMPS TO 65 PERCENT. AND WITHIN 10 YEARS, IT IS UP TO 85 PERCENT.

I AM NOT HERE TO SUGGEST THAT THIS IS THE GOVERNMENT'S FAULT. THERE ARE MANY REASONS WHY BUSINESSES FAIL. THROUGH THE YEARS, WE'VE IDENTIFIED THAT TWO OF THE MOST PROMINENT CAUSES ARE POOR MANAGEMENT SKILLS AND INSUFFICIENT CAPITAL.

BUT WHILE WE'RE NOT PREPARED TO SAY THAT COMPLICATED GOVERNMENT REGULATIONS CAUSE SMALL BUSINESS FAILURE - WE ARE PREPARED TO SAY THAT THEY ARE A CONTRIBUTING FACTOR. AND WE DO HAVE EVIDENCE THAT THE TIME AND COST ASSOCIATED WITH INTERPRETING AND COMPLYING WITH REGULATIONS HAVE CONTRIBUTED TO THE MANY FRUSTRATIONS WHICH SMALL BUSINESS OWNERS FACE IN THEIR FIGHT FOR SURVIVAL.

WE HAVE FOUND THAT DIFFICULT TO UNDERSTAND REGULATIONS ARE NOT ONLY INTIMIDATING, BUT THEY FREQUENTLY DIVERT THE BUSINESS OWNERS' ATTENTION FROM THE ESSENTIALS OF MANAGING HIS OR HER BUSINESS AND MAKING IT SUCCESSFUL. INSTEAD, OWNERS SPEND UNNECESSARILY LONG PERIODS OF TIME IN FIRST UNDERSTANDING, AND SECOND IN COMPLYING WITH THE COUNTLESS RULES AND REGULATIONS THEY FACE ON AN ALMOST DAILY BASIS.

THIS DIVERSION, INCIDENTALLY, MEANS NOT ONLY MANAGEMENT TIME, BUT MANAGEMENT DOLLARS, BECAUSE FREQUENTLY, THE SMALL BUSINESS OWNER HAS TO PAY GOOD MONEY OUT OF HIS OR HER POCKET TO GET PROFESSIONAL HELP IN UNDERSTANDING THE GOVERNMENT REGULATIONS AND STATUTES GOVERNING THEIR BUSINESS.

JUST LAST MONTH, COMPREHENSIVE ACCOUNTING CORPORATION CONDUCTED A SURVEY AMONG THE OWNERS OF ITS 250 FRANCHISED ACCOUNTING OFFICES REGARDING THE ISSUE OF GOVERNMENT REGULATIONS. OUR RESPONSE WAS OVERWHELMING. ALMOST HALF - SOME 110 OWNERS OF OUR FRANCHISED OFFICES - RESPONDED.

I WOULD LIKE TO SHARE THE RESULTS WITH YOU. THE SURVEY WAS SHORT - A TOTAL OF 10 QUESTIONS - BUT I THINK YOU WILL FIND THE ANSWERS INTERESTING.

WE ASKED SIMPLY - "DO YOU THINK GOVERNMENT REGULATIONS ARE A FACTOR IN SMALL BUSINESS FAILURES?" OVER 50 PERCENT SAID THEY WERE "SOMETIMES A FACTOR," AND ANOTHER 30 PERCENT SAID THEY WERE "A MAJOR FACTOR." THAT'S OVER THREE FOURTHS OF OUR RESPONDENTS THAT INDICATED THAT GOVERNMENT REGULATIONS ARE AT LEAST PARTIALLY RESPONSIBLE FOR SMALL BUSINESS FAILURES.

GETTING MORE SPECIFIC, WE ASKED, "OF THE BUSINESS OWNERS YOU KNOW WHO WENT OUT OF BUSINESS, WHAT PERCENT DID SO PARTLY OR WHOLLY BECAUSE OF DIFFICULTY IN COMPLYING WITH GOVERNMENT REGULATIONS?" ALMOST TWO THIRDS OF OUR RESPONDENTS INDICATED THAT THE NUMBER WAS ABOVE 10 PERCENT AND A THIRD SAID IT WAS ABOVE 20 PERCENT.

GOING ON, WE ASKED, "HAVE YOU OR ANY OF YOUR CLIENTS EVER HAD A PROBLEM IN INTERPRETING GOVERNMENT REGULATIONS RELATING TO SMALL BUSINESS?" OUT OF THE MORE THAN 100 RESPONSES WE RECEIVED, ONLY ONE PERSON SAID "NO." BETTER THAN 99 PERCENT SAID "YES."

ASKED TO ELABORATE "HOW FREQUENTLY DO YOU ESTIMATE THE PROBLEM OCCURS," SOME 59 PERCENT SAID "OFTEN," AND ANOTHER 32 PERCENT SAID "VERY FREQUENTLY."

ASKED "WHAT PERCENT OF YOUR WORKING TIME IS SPENT INTERPRETING GOVERNMENT REGULATIONS - BOTH FOR YOURSELF AND YOUR CLIENTS," THE GREATEST NUMBER OF RESPONDENTS, SOME 50 PERCENT, SAID THEY SPENT 10 TO 25 PERCENT OF THEIR TIME INTERPRETING GOVERNMENT REGULATIONS FOR THEIR CLIENTS.

LET ME EMPHASIZE THIS - 10 TO 25 PERCENT - THAT'S AS MUCH AS ONE FOURTH OF THEIR TIME SPENT INTERPRETING REGULATIONS, TIME THAT COULD BE MUCH BETTER SPENT IN PROVIDING COUNSEL ON HOW TO BETTER MANAGE THE BUSINESS, HOW TO SECURE CAPITAL, WHERE AND HOW TO SAVE MONEY, HOW TO IMPROVE CASH FLOW, HOW TO PLAN AND SAVE ON TAXES, AND MANY, MANY MORE CRITICAL PROBLEMS THAT COULD MEAN THE DIFFERENCE BETWEEN SMALL BUSINESS SUCCESS - OR SMALL BUSINESS FAILURE.

OR, LET ME PUT IT ANOTHER WAY. OUR AVERAGE ANNUAL ACCOUNTING FEE FOR A TYPICAL SMALL BUSINESS IS ABOUT $3,000. IF WE TAKE ONE-FOURTH OF THAT FIGURE, WE COME UP WITH ABOUT $750 THAT IT COSTS THE AVERAGE SMALL BUSINESS OWNER TO RECEIVE HELP IN INTERPRETING DIFFICULT TO UNDERSTAND GOVERNMENT REGULATIONS.

NOW, BEAR WITH ME. MULTIPLY THAT $750 BY THE ROUGHLY 15 MILLION SMALL BUSINESSES IN THE UNITED STATES AND YOU GET $11,250,000,000. THAT'S ELEVEN BILLION, 250 MILLION DOLLARS.

I THINK EVEN TODAY - WHEN WE'RE ACCUSTOMED TO READING ABOUT MEGA DOLLAR BUDGETS IN THE NEWSPAPERS - ELEVEN BILLION DOLLARS IS A LOT OF MONEY. I'M SURE WE CAN ALL THINK OF WAYS IN WHICH IT COULD BE BETTER SPENT.

GOING ON WITH OUR SURVEY, WE ASKED "WHAT PERCENT OF YOUR TIME DO YOU ESTIMATE YOUR CLIENTS SPEND INTERPRETING GOVERNMENT REGULATIONS," THE NUMBER WAS EVEN HIGHER. THE LARGEST SINGLE CATEGORY - OVER HALF - SPENT 10 TO 25 PERCENT OF THEIR TIME INTERPRETING GOVERNMENT REGULATIONS.

IN ANSWER TO "HOW MANY OF YOUR CLIENTS HAVE ASKED YOU TO INTERPRET GOVERNMENT REGULATIONS FOR THEM," BETTER THAN A THIRD SAID OVER 75 PERCENT OF THEIR CLIENTS HAD MADE SUCH A REQUEST.

"WHAT TYPE OF REGULATIONS CAUSE THE MOST CONFUSION?" THE CLEAR WINNER WAS TAX REGULATIONS, FOLLOWED IN ORDER BY EMPLOYEE BENEFITS, EMPLOYEE RIGHTS/EEO, ENVIRONMENTAL, TRADE, AND OTHER.

"WHAT PERCENT OF YOUR CLIENTS HAVE HAD A PROBLEM WITH THE GOVERNMENT FOR FAILURE OR INABILITY TO COMPLY WITH A GOVERNMENT REGULATION?" THE GREATEST NUMBER OF OUR RESPONDENTS, OVER 40 PERCENT SAID THAT ONE FOURTH TO ONE HALF OF THEIR CLIENTS HAD HAD SUCH A PROBLEM.

And last, perhaps the most discouraging statistic - "have government regulations become more or less complicated during the last five years?" I think you can guess the answer. No one said they were "less complicated," and only 7 percent said they had stayed the "same." Fully 93 percent of our respondents said that government regulations had become "more complicated." So the trend is pretty obvious.

I think we can all agree that one of our goals, certainly one of the goals of our regulations and statutes, is, or should be, to not discourage entrepreneurship - not add to the already existing difficulties that hinder the success of private enterprise. We certainly do not want to set up any unnecessary hurdles for the enterprising men and women who choose to pursue their version of the Great American Dream.

The consequences of small business failure can be severe. Individuals can lose their life savings and their homes. Failure can lead to the collapse of a marriage and a family. It can destroy self esteem.

We are aware that the government has become more sympathetic to small business and its problems. Agencies such as the Small Business Administration - especially the Chief Counsel for Advocacy - are doing an excellent job of keeping lawmakers aware of the concerns of small business and protecting its interests. We are also aware of legislation such as the Paperwork Reduction Act of 1980, the Regulatory Flexibility Act and tax reform legislation in 1986 that sought to resolve problems.

IRONICALLY, AND REGRETTABLY, EFFORTS TO ALLEVIATE THE BURDEN OFTEN COMPLICATE MATTERS FURTHER. FOR EXAMPLE, AN INDEPENDENT SURVEY LAST YEAR SHOWED THAT COMPLIANCE WITH NEW TAX LAWS DEMANDED MORE TIME, REGARDLESS OF WHETHER THE PREPARATION OF TAX FORMS WAS HANDLED INTERNALLY OR THROUGH OUTSIDE ACCOUNTANTS. THE EXPERIENCE OF OUR 250 FRANCHISEES SUPPORTS THIS FINDING.

OUR EXPERIENCE WITH DIFFICULT-TO-UNDERSTAND REGULATIONS SUGGESTS THAT THERE ARE TWO PARTS TO THE PROBLEM.

FIRST IS THE NUMBER AND SCOPE OF THE REGULATIONS. WE ARE IMPOSING MORE AND MORE RULES, REGULATIONS AND STATUTES ON OUR SMALL BUSINESS OWNER PRODUCING AN INCREASE IN THE BUSINESS OWNER'S PAPERWORK BURDEN HOURS. WE HAVE TO ASK OURSELVES - ARE ALL THESE RULES AND REGULATIONS NECESSARY? IS THIS NOT JUST ANOTHER CASE OF WHERE LESS MIGHT REALLY BE MORE?

THE SECOND PART OF THE PROBLEM IS THE STRUCTURE OF THE REGULATIONS. AND HERE, I'M TALKING ABOUT FORMAT AND LANGUAGE. TRADITIONALLY, REGULATIONS HAVE BEEN WRITTEN IN A SERIES OF DIVIDED AND SUBDIVIDED SECTIONS, EACH IDENTIFIED BY LETTERS AND NUMBERS.

BUT WHILE THE ORIGINAL PURPOSE MAY HAVE BEEN TO ORGANIZE THE REGULATIONS SO AS TO AID UNDERSTANDING - THE FINAL RESULT IS USUALLY A CASE OF ORGANIZATIONAL OVERKILL WITH FREQUENT CROSS REFERENCES, EXCEPTIONS TO THE RULES, AND ENDLESS SUBSECTIONS WITHIN SUBSECTIONS.

SENTENCES ARE TOO COMPLEX, CONVOLUTED AND CONFUSING. A BUSINESS PERSON SKILLED IN MANUFACTURING PRODUCTS OR SERVING CUSTOMERS OFTEN STRUGGLES TRYING TO INTERPRET THESE REGULATIONS. SOME FAIL TO COMPLY SIMPLY BECAUSE THEY ARE UNABLE TO UNDERSTAND WHAT IS REQUIRED.

WE UNDERSTAND THAT THE ENVIRONMENTAL PROTECTION AGENCY HAS ALREADY TAKEN STEPS TO SIMPLIFY ITS REGULATORY LANGUAGE AND HAS ADDED PERSONS WITH JOURNALISTIC SKILLS TO ITS STAFF FOR THIS PURPOSE. THIS IS A GREAT IDEA! I THINK PART OF OUR PROBLEM IS THAT OUR REGULATIONS ARE MORE AND MORE BEING WRITTEN BY LAWYERS. THIS MIGHT MAKE GOOD SENSE FROM A LEGAL POINT OF VIEW - BUT IT'S BAD BUSINESS IN TERMS OF GETTING OUR MILLIONS OF NON-LAWYER BUSINESS OWNERS TO UNDERSTAND WHAT'S GOING ON.

AT COMPREHENSIVE ACCOUNTING CORPORATION, AS AT OTHER ACCOUNTING FIRMS OR LAW FIRMS, WE ARE MORE ACCUSTOMED TO DEALING WITH THE LANGUAGE AND STRUCTURE OF REGULATIONS AND STATUTES. HOWEVER, EVEN FOR US AS PROFESSIONALS, READING MANY OF THE REGULATIONS AND STATUTES WHICH WE HAVE TO INTERPRET IS DIFFICULT.

WE RECENTLY SOUGHT TO CALL ATTENTION TO THIS PROBLEM BY INITIATING OUR MOST INCOMPREHENSIBLE GOVERNMENT REGULATION AWARD. WE ASKED OUR FRANCHISEES TO IDENTIFY THE GOVERNMENT REGULATION WHICH THEY FELT WAS THE WORST WRITTEN AND MOST DIFFICULT TO UNDERSTAND. OURS WAS A TONGUE-IN-CHEEK EFFORT TO CALL ATTENTION TO WHAT WE FELT WAS A SERIOUS PROBLEM. WE HOPED THIS LIGHTHEARTED APPROACH WOULD GET PEOPLE'S ATTENTION.

OUR FRANCHISEES RESPONDED ENTHUSIASTICALLY. OF THE MANY REGULATIONS CITED, 20 FINALISTS WERE SELECTED. THIS LIST WAS FURTHER NARROWED DOWN BY A COMMITTEE OF PRACTICING ACCOUNTANTS UNTIL A CLEAR WINNER EMERGED.

FIRST PRIZE WENT TO TREASURY REGULATION 31.6302 (C) - 1, RELATING TO AN EMPLOYER'S OBLIGATIONS TO DEPOSIT WITHHELD EMPLOYMENT TAXES IN APPROPRIATE DEPOSITORIES.

UNDER THE REGULATION, THE TIME OF THESE DEPOSITS CONFUSINGLY SHORTENS AS THE AMOUNT OF THE TAX THAT IS OWED INCREASES. THE PROBLEM IS EVIDENT IN THE FIRST TWO SENTENCES:

"EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SECTION AND HEREINAFTER IN THIS SUBDIVISION (I), IF AT THE CLOSE OF ANY CALENDAR MONTH THE AGGREGATE AMOUNT OF UNDEPOSITED TAXES (AS DEFINED IN PARAGRAPH (A) (1) (III) OF THIS SECTION) IS $500 OR MORE, THE EMPLOYER SHALL DEPOSIT THE UNDEPOSITED TAXES IN A FEDERAL RESERVE BANK OR AUTHORIZED FINANCIAL INSTITUTION (SEE SUBPARAGRAPH (3) (III) OF THIS PARAGRAPH) WITHIN 15 CALENDAR DAYS AFTER THE CLOSE OF SUCH CALENDAR MONTH.

"HOWEVER, THIS (A) OF SUBDIVISION (I) SHALL NOT APPLY IF THE EMPLOYER WAS REQUIRED TO MAKE A DEPOSIT OF TAXES PURSUANT TO (B) OF THIS SUBDIVISION (I) WITH RESPECT TO AN EIGHT-MONTHLY PERIOD WHICH OCCURRED DURING THE CALENDAR MONTH."

SOME OF THE REGULATIONS THAT WERE IN THE RUNNING FOR OUR AWARD REQUIRED EXTENSIVE AND DETAILED RECORDS, SUCH AS AN IRS REGULATION ON RECORDING BUSINESS DEDUCTIONS, AND AN OSHA REGULATION FOR CHEMICAL PRODUCERS THAT REQUIRES 19 SEPARATE PIECES OF INFORMATION ON EACH CHEMICAL.

A REGULATION ON THE DEFINITION OF HAZARDOUS WASTE WAS SO CONFUSING THAT AN EPA DISTRICT OFFICE OFFICIAL IN CHARGE OF IMPLEMENTING IT SAID THAT SHE HERSELF COULD NOT UNDERSTAND IT.

WE ASKED OUR ACCOUNTANTS TO COME UP WITH SOME SIMPLE SUGGESTIONS FOR IMPROVING THE SITUATION.

THEIR FIRST SUGGESTION HAD TO TO WITH SIMPLY REDUCING THE NUMBER OF REGULATIONS WHICH ARE OUT THERE - WHICH AS I UNDERSTAND IT, IS THE SUBSTANCE OF THE PAPERWORK REDUCTION ACT. WE TRULY FEEL THAT FEWER REGULATIONS WOULD HAVE A BENEFICIAL EFFECT ON OUR NATION'S SMALL BUSINESSES.

TOWARD THAT END, I WOULD LIKE TO EXPRESS SUPPORT FOR THE CONCEPT BEHIND THE PAPERWORK REDUCTION ACT OF 1980 AND ITS ADMINISTERING AGENCY, THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS. AS WE UNDERSTAND IT, OIRA HAS THE DIFFICULT JOB OF SEEING THAT THE FEDERAL GOVERNMENT GETS THE INFORMATION IT NEEDS WHILE PROTECTING THE PUBLIC FROM UNREASONABLE OR UNNECESSARY PAPERWORK. GIVEN THE SEEMINGLY NEVER-ENDING INCREASE IN FEDERAL PAPERWORK REQUIREMENTS, THE WORK OF AN AGENCY LIKE OIRA APPEARS TO BE MOST ESSENTIAL.

BESIDES REDUCING THE NUMBER OF REGULATIONS - OUR ACCOUNTANTS ALSO HAD SOME SIMPLE SUGGESTIONS THAT DEALT WITH THEIR STRUCTURE.

WHILE NOT AN ALL ENCOMPASSING, OR PARTICULARLY PROFOUND LIST, WE THOUGHT THE FOLLOWING SUGGESTIONS FOR WRITING EASIER TO UNDERSTAND GOVERNMENT REGULATIONS MIGHT BE HELPFUL:

1. USE SIMPLE, DECLARATIVE SENTENCES. AVOID COMPOUND OR COMPLEX SENTENCES.

2. KEEP SENTENCES SHORT. AVOID SENTENCES THAT RUN FOR MORE THAN TWO TO THREE LINES.

3. USE SHORT, SIMPLE WORDS. AVOID CUMBERSOME LANGUAGE. AVOID PHRASES LIKE "EXCEPT AS PROVIDED," AND WORDS LIKE "HEREINAFTER."

4. AVOID EXTENSIVE SUBDIVISIONS.

5. AVOID CROSS-REFERENCING, ESPECIALLY PARENTHETICALLY WITHIN A SINGLE SENTENCE.

THESE ARE FIVE SIMPLE RULES - BUT I THINK YOU GET THE IDEA.

WE ALL KNOW THAT THE PROBLEM OF DIFFICULT-TO-UNDERSTAND GOVERNMENT REGULATIONS EXISTS. OUR INTENTION IN INITIATING OUR "MOST INCOMPREHENSIBLE GOVERNMENT REGULATION AWARD" - AND WHAT I HOPE TO ACHIEVE BY BEING HERE TODAY - IS TO DRAW ATTENTION TO THE FACT THAT THUS FAR, OUR EFFORTS TO SIMPLIFY THESE REGULATIONS HAVE FALLEN SHORT OF SUCCESS.

WE HAVE A LONG WAY TO GO. WE ARE PLEASED THAT YOUR SUBCOMMITTEE IS REVIEWING THIS PROBLEM AND WE WOULD LIKE TO VOLUNTEER TO COOPERATE WITH YOU IN ANY WAY YOU MIGHT FIND HELPFUL.

(END)

Comprehensive Accounting Corporation Government Regulation Survey Results

This is a nationwide survey of Comprehensive Accounting Corporation accountants concerning the effect of difficult-to-understand government regulations on small business owners. Some 110 of Comprehensive's 250 accountants, roughly one-half, responded to a mailed questionnaire, which was sent out in June, 1989. Results were tabulated July 10, 1989.

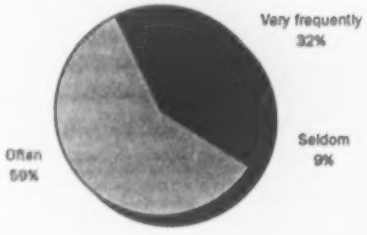
Questionnaire

1. Have you or any of your clients ever had a problem in interpreting government regulations relating to small business?

   Yes - 99% No - 1%

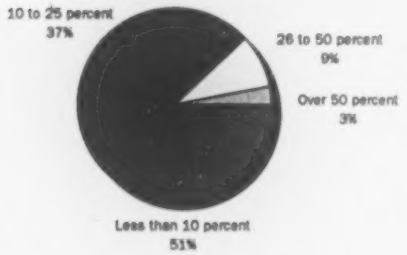
2. If yes, how frequently do you estimate the problem occurs?

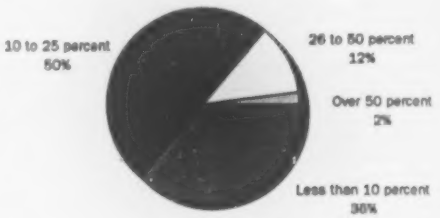
Very frequently	32%
Often	59%
Seldom	9%
Never	0%



3. What percent of your working time is spent interpreting difficult to understand government regulations either for yourself or your clients?

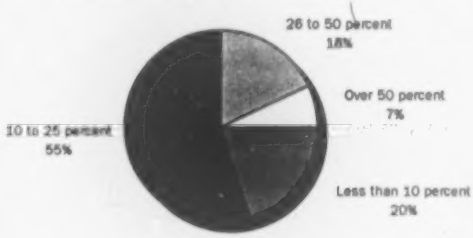
	Yourself	Client
Over 50 percent	3%	2%
Twenty six to 50%	9%	12%
Ten to 25 percent	37%	50%
Less than 10 percent	51%	36%

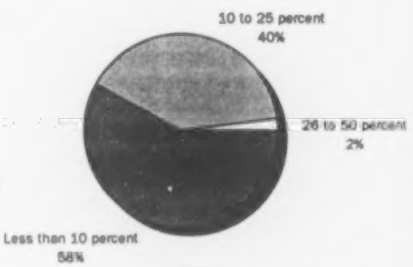




4. What percent of their time would you estimate your clients have spent interpreting difficult to understand government regulations?

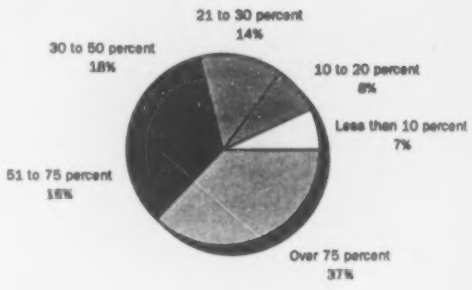
	Prior to being client	As a client
Over 50 percent	7%	0%
Twenty six to 50 percent	18%	2%
Ten to 25 percent	55%	40%
Less than 10 percent	20%	58%





5. How many of your clients have asked you to interpret difficult to understand government regulations for them?

Over 75 percent	37%
Fifty one to 75 percent	16%
Thirty to 50 percent	18%
Twenty one to 30 percent	14%
Ten to 20 percent	8%
Less than 10 percent	7%

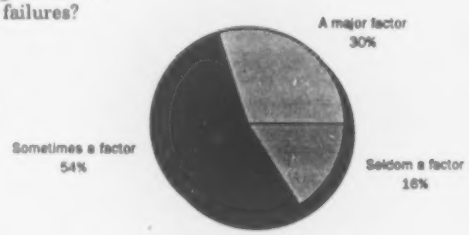


6. What type of regulations cause you or your clients the most anguish? (Ranked in order of most troublesome.)

Tax	1
Employee benefits	2
Employee rights/EEO	3
Environmental	4
Trade	5

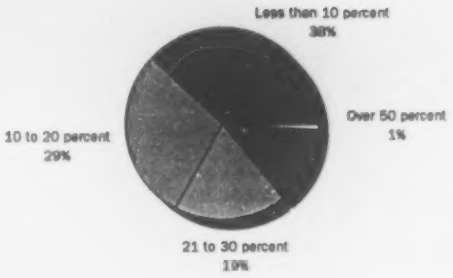
7. Do you think that difficult to understand government regulations are a factor in small business failures?

A major factor	30%
Sometimes a factor	54%
Seldom a factor	16%
Never a factor	0%



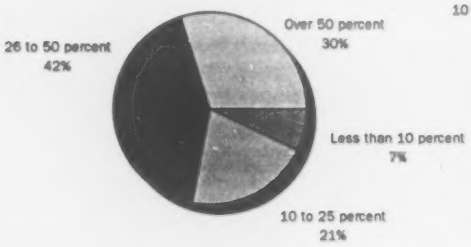
8. Of the business owners you know who went out of business, what percent did so partly or wholly because of difficulty in complying with difficult to understand government regulations?

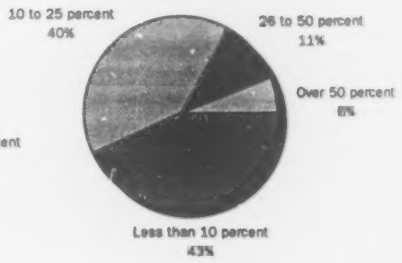
Over 50 percent	1%
Thirty one to 50 percent	13%
Twenty one to 30 percent	19%
Ten to 20 percent	29%
Less than 10 percent	38%



9. What percent of your clients have had a problem with the government for failure or inability to comply with a difficult to understand government regulation?

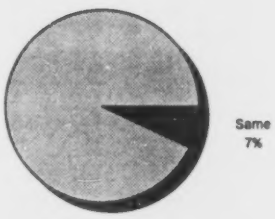
	Prior to being a client	As a client
Over 50%	30%	6%
Twenty six to 50%	42%	11%
Ten to 25%	21%	40%
Less than 10%	7%	43%





10. Have government regulations become more or less complicated during the last five years?

More complicated	93%
Same	7%
Less complicated	0%



11. Please describe briefly the most absurd, troublesome or difficult situation that you or one of your clients has faced because of a difficult to understand government regulation?

- "Tax and government regulations are not written in clear, concise, to the point English. Have to use too many reference books to really understand tax compliance rules and even then, many times rules are unclear and confusing. Too much time in research and answers are not always found."
- "Payroll tax compliance is the most troublesome area and the penalty and interest charges are unrealistic."
- "A plumbing contractor was unable to deposit payroll taxes because after completing projects, the owner declared bankruptcy. Therefore the client received no pay for work performed and payroll paid. This occurred several times in the past three years. The IRS would not take into consideration these extenuating circumstances that prevented deposits from being made. They added (such high) penalties and interest that the plumbing contractor will be forced to file for bankruptcy also. In addition, the contractor will have to sell all personal assets to satisfy IRS claims."
- "Three regulations:
  (1) The payroll tax deposit requirements set forth in U.S. Treasury Circular E. The penalties are very discouraging to small business owners.
  (2) Section 89 governing employees, health and welfare. This is an exceptionally stupid piece of incomprehensible legislation.
  (3) The Tax Reform Act of 1986 is incomprehensible. "
- "Two regulations:
  (1) Determination of a sub-contractor vs. self-employed vs. employee.
  (2) The IRS levied a client's account for money that had already been paid to them. It has been over a month now and the money has not been returned to them."

- "Based on hourly billing, we have billed over $400 to date to get the IRS to correct 941 amounts which they 'made up' on one client. Many copies of the correct documents have been sent to various offices but the correction still has not been made on the IRS computer."
- "Recently we have become aware that the IRS will not issue blank depository coupons (form 8109). You must use a pre-printed form. It takes four to six weeks to receive them after they are ordered. Yet, you have to make a payroll deposit within three days of going over $3,000 in liability - or, you have to pay a 10 percent penalty for late payment. When a new taxpayer does not receive his coupons in time or runs out of the coupons, his situation is impossible."
- "The system of tax penalties makes no sense. They are often excessive and often without real good reason."
- "Trying to interpret section 89 regulations, and regulations on all benefits concerning what is allowed, and what is not..."
- "Taxing authority that has one office receiving forms and money and a second office sending out notices for failure to pay, and then filing liens even though the tax was paid to the first office. "
- "The most ridiculous regulation is the requirement that we all file our taxes on April 15. We cannot do the best possible job for our clients this way. I do not like to get extensions because clients do not like that. There should be some type of rotating system based on alphabetical order, or something."
- "Income tax audits are a game and a joke for both accountants and clients. Section 89 is the worst piece of legislation in years. The Tax Reform Act and paperwork reduction act are causing more work and confusion for all - especially preparers. "
- "Here's a situation: Our client becomes delinquent on payroll taxes. The case goes to ACS for collection and the client comes to us for help. We advise the client to make all current 941 payments on time to avoid compounding the problem. We also advise the client to make payments to the IRS as requested by PRO (Problems Resolution Office) on the 'old' debt, perhaps $1,000. Several weeks later, the client receives notice of a lien for the full amount because payments have not been applied."
- "Due to regulations regarding the purchase for resale of alcoholic beverages, I have a liquor store client who cannot buy products for resale at the prices many of his competitors are selling it at retail making it virtually impossible for him to be price competitive."
- "A company owner is forced to pay himself (and the payroll taxes associated with his salary) in spite of the fact that the company reported a tax loss for the same period."
- "Trouble in determining the deductability of employee benefit plans, especially in light of section 89. "

- "Tax appears to be the number one problem area. Small businesses are taxed to the extreme often causing the bleeding to death of the small business. Many enter business with no knowledge of the number of, and the amount of taxes they must pay - payroll related, personal property tax, unemployment and sole-proprietor income/social security tax, and sales tax to name a few."
- "The department of labor regulations requiring payment of a final paycheck to a former employee even if the former employee owes the company money or has damaged company property."
- "Recently, in dealings with the IRS, a client was issued a levy on their bank account regarding payroll taxes going back to 1986. Upon investigation, it was disclosed all taxes were deposited on time and at a bank in the state where the business was located. When this information was presented to the IRS, they said their records showed a deficiency for an entire quarter in 1986 with allegedly no payments made by the client. Investigation revealed that the payments were, in fact, made but were applied erroneously to a different federal identification number by the IRS. It was subsequently revealed that taxes were refunded to this erroneous taxpayer. Yet, the IRS would not release the levy until our client contacted the individuals to whom the refund was forwarded and had them issue a check to the IRS. These events lasted some 14 months, during which time the IRS issued six levies against our client - though they released all six upon investigation. This may not be a case of an incomprehensible regulation so much as it is a case of lack of communication within a department."
- "IRS regulations regarding tips in restaurants require the employer to keep excessive amounts of detailed information including sales per employee, sales with tips or credit cards, tips on credit cards, take-out sales, etc. The employer must keep daily records on each employee. These tip regulations apply only to restaurants. They do not apply to taxi companies, beauty shops or other businesses where tips are part of the compensation."
- "We filed a power of attorney form for a new client with the IRS. We received no confirmation. When I call the IRS to discuss the client's tax problem, they won't talk to me unless I hand deliver another copy of the form to the local IRS office. This represents three hours of wasted time for me."
- "Section 89 - and uniform capitalization rules. Small businesses need to be exempt from both of these regulations."
- "Explanation of payroll deposits when over $3,000 a month. Also quarterly estimates - in a bad year after good year to safeguard penalty."
- "The tax act of 1986 has caused extreme problems due to lack of grandfathering provisions."
- "The situation with payroll tax penalties. Employers are expected to pay the liability accumulating $3,000 within three days or be assessed 10 percent of the amount in excess. Employers are many times unaware of the rules and are assessed these charges even though the regulations are difficult to understand."

- "Trying to get information for a client regarding tax notices or other IRS actions (which are frequently erroneous). Writing is not effective because of the delay in time in receiving a reply, or lost documentation by the IRS. Phone calling is frustrating because IRS operators don't know or care about the problems you have...or the computer is down...or they cannot talk to you because of some regulation. The entire system is burdensome. "
- "I had a client that sold cemetery plots. The owner had a company car because he handled all outside sales. He owned the business for six years and had all his travel log books except for one year. He was audited for that year and the IRS disallowed 100 percent of his travel expense because he could not prove his deduction even though he could produce the log books for three years before and two years after the audit year."
- "The entire Tax Reform Act of 1986."
- "Most troublesome: 11205 Regulations, Sec. 89 regulations, some 1040 regulations and section 263A regulations."
- "Code Section 89."
- "Without a doubt the payroll tax deposit requirements and penalties for non-compliance are the most frequent problems facing today's small business owner. The penalties are harsh and are causing many small businesses to go out of business or go 'underground.'"
- "Other than the hassle a one-employee business has to put up with to comply with government regulations, I think that complying with insurance rules are the most unfair. My clients don't mind filling out Form I-9, but they do object to having to buy the forms from the government. "
- "Vehicle expense for business has become unbelievably complicated and I'm not sure the complication justifies the tax or tax savings. Also, once a problem exists concerning payroll taxes, no matter how routine, it seems to multiply and become more complicated due to:
  (1) inability to communicate with IRS except by letter;
  (2) discrepancies in IRS communications i.e. amount owned on the second notice can be reconciled to the amount owed on the first; and
  (3) the deficiency may pop up out of nowhere after several years and the taxpayer must prove to the IRS he is innocent."
- "Employee versus subcontractor definitions in the construction industry are difficult to understand. Businesses that comply are at a disadvantage to those that don't."

Senator DIXON. Thank you, Mr. Lauzen. That was very, very interesting.

I wonder if Ms. Norberg would permit me, before she begins, to recognize the distinguished senior Senator from Iowa, the ranking member on this Subcommittee, Senator Grassley, who I expect may have a statement.

Senator GRASSLEY. Well, I do have a statement, Mr. Chairman, but I'm not going to take the valuable time of the Subcommittee and everybody to listen to it. So, I'm going to put that in the record.

But I do want an opportunity to explain the reason for my absence. No. 1, is that Secretary Bennett has been before the Judiciary Committee on the National Drug Strategy. And, No. 2, I had also a meeting of the Transportation Subcommittee of Appropriations in which we voted out our annual appropriations bill. So, I'm sorry I missed it.

And I really have an interest in this issue going back to my times in the House of Representatives when the legislation was passed, as well as my position as ranking minority member. I should have been here through the entire hearing. So, thank you for putting up with my absence.

Senator DIXON. Well, the Senator is a very useful and fine member, and I thank him for his remarks. In his usual brevity, he has made his statement and the statement will be placed in the record.

[The prepared statement of Senator Grassley follows:]

23-709 - 89 - 5

STATEMENT BY SENATOR CHARLES E. GRASSLEY

MR. CHAIRMAN:

I WANT TO COMMEND YOU, AS WELL AS THE FULL COMMITTEE CHAIRMAN AND RANKING MEMBER, SENATORS BUMPERS AND BOSCHWITZ, FOR CONVENING THIS HEARING.

THE PURPOSE OF OUR EFFORTS TODAY IS TO HELP DETERMINE THE EFFECTIVENESS OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS (OIRA), IN OVERSEEING THE IMPLEMENTATION OF THE PAPERWORK REDUCTION ACT OF 1980. BY PASSING THE PAPERWORK REDUCTION ACT, CONGRESS ATTEMPTED TO ACHIEVE ACCOUNTABILITY WITHOUT BURYING BUSINESSES IN PAPERWORK REGULATIONS AND REQUIREMENTS.

HOWEVER, IT'S IMPORTANT TO RECOGNIZE THAT CONGRESS HAS BEEN THE GUILTY PARTY IN REGARD TO MANY OVERLY BURDENSOME PAPERWORK REQUIREMENTS ON SMALL BUSINESS. THE SECTION 89 FIASCO IS PROBABLY THE BEST, MOST RECENT EXAMPLE OF GOVERNMENT REGULATION GONE HAYWIRE. UNFORTUNATELY, OVERREGULATION SEEMS TO BE THE STATUS QUO AROUND HERE.

SOME HAVE CRITICISED OIRA FOR BEING INEFFECTIVE AND OVERLY POLITICISED. SOME HAVE CHARGED THAT THE IMPLEMENTATION OF NECESSARY REGULATIONS HAVE BEEN UNNECESSARILY HELD UP BY THE AGENCY. THE RESULT OF THIS CRITICISM IS AN EFFORT TO EFFECTIVELY KILL OIRA BY PREVENTING THE AGENCY'S REAUTHORIZATION.

OUR TASK TODAY IS TO HELP PUT TOGETHER A RECORD REGARDING OIRA'S EFFECTIVENESS AND NECESSITY IN RELIEVING THE BURDEN OF GOVERNMENT REGULATION ON SMALL BUSINESSES. I LOOK FORWARD TO THE TESTIMONY FROM TODAY'S WITNESSES, AND I THANK EACH WITNESS FOR APPEARING BEFORE THIS SUBCOMMITTEE.

Senator DIXON. Ms. Norberg, we are delighted to have you here. Glad to see your button. And we will be delighted to hear your testimony.

Ms. NORBERG. We also have a button for you, Senator.

Senator DIXON. All right, thank you.

STATEMENT OF DENISE NORBERG, GUST A. NORBERG & SON, INC., CHICAGO, IL, REPRESENTING THE AMERICAN SUBCONTRACTORS ASSOCIATION AND THE U.S. CHAMBER OF COMMERCE

Ms. NORBERG. Chairman Dixon, I am pleased to speak in front of you today as you are from my home State and also Senator Grassley, as my family has strong ties to Iowa.

I am Denise Norberg, president of a small business, family-owned construction firm in Chicago, Gust A. Norberg & Son. Today I am representing the American Subcontractors Association and the 19 associations that comprise its National Associations Council. I am also speaking for the U.S. Chamber of Commerce which represents nearly 180,000 businesses and organizations, including local and State chambers of commerce and trade and professional associations.

The paperwork burdens associated with Government purchasing discourage small business firms like mine from participating in the Government market. A job in my trade of stairbuilding in the private sector can be analyzed and bid with from 1 to 10 hours of time and a maximum of six pages of documentation. Preparation of a similar bid to the Government can take as much as 20 to 40 hours.

If a small construction subcontractor does choose to do business with the Government and is awarded a contract, it is faced with a maze of procurement rules. First, the FAR. Then there are the agency-specific supplements. If the contractor is dealing with DOD, each branch of the military has its own supplement. In some cases each command has its own supplement.

And just last week, ASA was informed of a situation where an individual military base has developed and is implementing its own purchasing procedures, which are different from those being used elsewhere.

Small businesses have two choices: Avoid the Government market; or, develop and implement the costly office procedures necessary to perform a Government contract.

Some small businesses tell us that because of the paperwork and regulatory burdens associated with Government work, they routinely bid such work 10 to 30 percent higher than similar work in the private sector and still win contracts. And although they feel their risks are greater on Government work, their profit margins are lower than on similar jobs in the private sector.

What can Congress do to reduce procurement paperwork? Congress should reauthorize OIRA and give it the tools to protect both individuals and businesses from regulation run amok. One such tool should be modeled on the provision in the OFPP act under which the administrator has 60 days to respond to a public request for determination on whether a rule is consistent with the FAR. A

similar procedure within OIRA would open the door for greater public participation and input in paperwork reduction efforts.

Government procurement is not the only area in which paperwork burdens are overwhelming for small businesses. It may not even be the most important. After all, a small business can make a choice about whether it wishes to do business with the Government and have the Government as a customer. But, a small business has no choice about complying with the myriad of other Government paperwork requirements—from taxes to hiring, from employee benefits to health and safety.

Both ASA and the chamber urge Congress to demand that Federal agencies put a renewed emphasis on the Regulatory Flexibility Act. Small businesses are the wheels that turn the huge economy of this country. If these wheels start to crumble under the weight of Government, we will have a problem far greater than whether a contractor should submit one copy or six copies of an invoice.

Government must realize that any regulation which involves information collection or paperwork imposes a much more severe burden on a small business than on a large business. And I think it has been stated that you have recognized that.

My firm, like most, has purchased computer equipment to help us deal with recordkeeping for the Government. We have developed an employee handbook, at a cost of $3,000, to ensure that we are complying with the rules and regulations governing our workers. We spend several thousand dollars every year on a payroll service, because of our fear of the penalties if we make an error. Unfortunately, our pension plan is not as generous as we would like it to be, because of the cost of compliance.

Time is money—whether business owners do their own paperwork, hire someone else to do it, or buy expensive equipment to aid in their compliance effort.

Our family business was started by an immigrant who came through Ellis Island and immediately made a contribution to his new country. I'm sure he never dreamed that three generations later the Federal Government would be a partner in the family business as it is the business partner of every small business in America. Unfortunately, it is a partner that makes no contribution to the bottom line. It only drains the till.

Thank you.

[The prepared statement of Ms. Norberg follows:]

Statement of the

American Subcontractors Association

Before the

Subcommittee on Government Contracting
and Paperwork Reduction
Committee on Small Business
United States Senate

on the Paperwork Reduction Act

presented by

Denise Norberg
Gust A. Norberg & Son, Inc.
Chicago, Illinois

September 7, 1989

1004 Duke Street • Alexandria, Virginia 22314-3512
(703) 684-3450 • FAX (703) 836-3482

Statement on the Paperwork Reduction Act

The American Subcontractors Association (ASA) is a national trade association with more than 8,000 firms representing all major construction trades in 60 chapters. In addition to its own individual company members, ASA represents 19 other specialty construction trade associations with members of their own. A list of these associations is attached (Attachment A).

Reducing government paperwork burdens on our members has been a goal of ASA since it was founded in 1966. Several ASA members were among the delegates to the 1980 White House Conference on Small Business who worked to include the Paperwork Reduction Act among the Conference's final recommendations. ASA was a strong proponent of the legislation that became the Paperwork Reduction Act of 1980. And, of course, we strongly supported the reauthorization of the Office of Information and Regulatory Affairs in 1985.

Many believe that the Paperwork Reduction Act has not lived up to the intent of Congress. In some measure, we agree. Government continues to impose a nightmare of information collection and reporting requirements on small businesses. However, one question seems to have gone unanswered:

> How much worse would that paperwork burden be if OIRA had not been in place?

ASA believes the additional burden would be significant.

AMERICAN SUBCONTRACTORS ASSOCIATION, INC.
1004 DUKE STREET, ALEXANDRIA, VA 22314-3512
(703) 684-3450

Today, the Paperwork Reduction Act is in serious danger of virtual repeal. Opponents claim that OIRA has become an unnecessary logjam for regulations proposed by the agencies. They question whether the Act granted OIRA the authority to require an agency to accomplish its mission in the most economical and efficient way, including with the minimal amount of information collection and paperwork.

In the House, Rep. John Conyers, chairman of the Government Operations Committee, has circulated a discussion draft of legislation that would, for all intents and purposes, disembowel the agency. In addition, an amendment has been added to the Postal Service Appropriations bill in the House that would prohibit funds to be spent for OIRA unless the agency is reauthorized by October 1--an unlikely proposition.

As often is the case with small business advocates, ASA seems to be swimming against the tide. We believe the Paperwork Reduction Act should be strengthened. Thus, ASA appreciates this opportunity to discuss the importance of reduced paperwork on small business. We ask that you carefully consider our recommendations.

First, I would like to tell you a little about my family's firm, Gust A. Norberg & Son, Inc. The company has an annual sales volume of $1.5 million; we truly are a small business. We have 20 employees. Four of these employees are officers, who

also act as office staff. Thus, time spent processing paperwork is highly-compensated time, as is likely to be the case with any small family-run business.

The paperwork burdens associated with government procurement discourage small business firms like mine from participating in the government market. A job in my trade (stairbuilding) in the private sector can be analyzed and bid with from one to ten hours of time and a maximum of six pages of documentation. Preparation of a similar bid to the government can take as much as 20 to 40 hours. This kind of time may be appropriate for a general contractor bidding for a job worth millions of dollars; but for a small specialty trade contractor, this type of overhead cost in relation to sales is not justifiable or realistic.

What happens if a small construction trade contractor does choose to bid on and is subsequently awarded a government contract? It is faced with a maze of procurement regulations. First, there is the Federal Acquisition Regulation, an enormous, complex and often confusing document. Then there are the agency specific supplements, such as the Defense Acquisition Supplement and the General Services Administration Acquisition Regulation. If the contractor is dealing with DOD, each branch of the military has its own supplement. More frequently, we have found that each command has its own supplement. Indeed, last week, ASA

was informed of a situation where an individual Air Force Base, in an area with several bases, has developed and is implementing its own procurement procedures, which are different than those being used elsewhere.

Included in this confusing, and often contradictory, array of regulations are many that have no relationship to construction in the real world--that is, the private sector--or, even to common sense. The documentation, both required and preventive, is tremendous. According to one ASA member, a significant percent of whose work is for the federal government, for a typical government project he develops and maintains at least eight times more paperwork than on a similar private job. He reported that he recently submitted an 18 page invoice to the government; a similar invoice for a private sector job, including all the necessary certifications, is one page.

Construction trade contractors have two choices. Avoid the government market. Or, if that is not possible or desirable, develop and implement the costly office procedures necessary to perform a government contract. Some ASA members tell us that they routinely bid government work 10 to 30 percent higher than similar work in the private sector--and still win contracts. Nonetheless, although they feel their risks are greater on government work, their profit margins usually are lower than on similar jobs in the private market.

How many good contractors with quality products are refusing to bid government work rather than deal with increased overhead costs? How many inflated bids is the government receiving because of unnecessary documentation? What is the difference between the purchasing needs of the federal government and construction buyers in the private sector? Surely private buyers also want to protect their interests with fervor. However, they seem to be able to do it with far thinner files.

What can Congress do to reduce procurement paperwork?

ASA urges you to renew your demands to the procurement agencies, particularly DOD, for a single, government-wide procurement system.

We note that the Office of Federal Procurement Policy will soon issue a Congressionally-mandated report on procurement paperwork, one part of which will address small business. ASA urges you to review that report, as we will, and to require the implementation of any recommendations for simplification.

In addition, Congress should reauthorize OIRA and give it the tools to protect both individuals and the public from regulation run amok. One such tool was developed by Senator Lawton Chiles for the Office of Federal Procurement Policy. Under the OFPP Act, a member of the public can write to the OFPP Administrator and ask him to review a procurement rule to determine whether it is consistent with the FAR; the Administrator must respond within 60 days.

ASA believes that OIRA should be granted a similar tool. That is, we believe Congress should add a provision to the PRA that would allow a member of the public to write to the OIRA Administrator and ask him to review a government information collection or paperwork requirement to determine whether it is necessary, and, if necessary, whether it is being conducted in the most ecomomic and efficient manner. The OIRA Administrator should be required to respond within 60 days to a request. ASA believes that this procedure would open the door for greater public participation and input in paperwork reduction efforts.

Such a tool becomes all the more important when one realizes that many of the agencies avoid compliance with existing paperwork reduction requirements. Frequently, proposed regulations simply state that they do "not contain information collection requirements that require the approval of OMB under 44 U.S.C. 3501 et seq." Other times, proposed regulations make no mention of the PRA requirements at all.

Let us give a recent example of a proposed rule impacting the construction industry. On March 24, 1989, the General Services Administration issued a proposed rule concerning construction contract modifications (GSAR Notice No. 5-255). The proposed rule would have required both construction prime contractors and subcontractors to develop, maintain and submit extensive pricing data that is not currently required under

either the GSAR or the FAR. Yet GSA claimed that its proposed rule had no paperwork impact. ASA not only filed comments with GSA (See Attachment B), we also filed a protest with the OFPP Administrator as described above (See Attachment C) and requested OIRA to review the paperwork impact (See Attachment D).

OFPP Acting Administrator Burman responded to our protest, as required by law. We received no response from OIRA Administrator Plager, although we have been led to believe that an OIRA representative contacted GSA. Fortunately, this tale has a happy ending: GSA terminated the rulemaking pending resolution of "a number of policy and procedural issues."

The point of the tale, however, is that it never should have happened. GSA never should have issued a proposed rule without identifying its paperwork impact, determining whether it was necessary, and determining whether its goals were being achieved in the most efficient and economic manner. GSA's claim that its proposed rule had no paperwork impact was ludicrous on its face. The public should have a formal method of protest in such a situation. ASA believes the method developed for OFPP by Senator Chiles, the original sponsor of the Paperwork Reduction Act, is equally applicable to OIRA.

Government procurement is not the only area in which paperwork burdens are overwhelming for small businesses. Indeed, it is, perhaps, not even the most important. After all, as I noted above, a small business can make a choice about whether it

wants the government as a customer. A small business has no choice about complying with the myriad of other government paperwork requirements--from taxes to hiring, from employee benefits to health and safety. Small business owners are forced to take valuable time away from daily business operations to learn as much as we can about often arcane requirements. When confronted with a problem, we often are so cowed by the idea of incurring the wrath of government bureaucrats, that we don't pursue an equitable solution through appeals, or even through our elected representatives.

Thus, ASA urges Congress to demand that federal agencies put a renewed emphasis on the Regulatory Flexibility Act. A centerpiece of the recommendations of the delegates of the 1980 White House Conference on Small Business, RegFlex requires the agencies to determine whether a regulation impacts on a significant number of small businesses, and whether any negative impact can be mitigated through an exemption or modified procedures. As they do with the PRA, many agencies give RegFlex only perfunctory service.

Small businesses are the wheels that turn the huge economy of this country. If these wheels start to crumble under the weight of government regulatory and paperwork requirements, we will have a problem far greater than whether a contractor should submit one copy or six copies of an invoice. Government must

realize that any regulation which involves information collection or paperwork imposes a much more severe burden on a small business than on a large business.

One of the hidden costs of compliance with government regulatory and paperwork requirements is the prevention of non-compliance. Time is money . . . whether business owners do their own paperwork, pay someone else to do it or buy expensive equipment to aid in the compliance effort.

My firm, like most, has spent money on computer equipment to help with recordkeeping. We recently had developed an employee handbook, at a cost of $3,000, to assure that we are complying with the many rules and regulations governing our workers. We spend several thousand dollars each year on a payroll service, because of our fear of the penalties if we make an error. Our pension plan is not as generous as we would like, because of the cost of compliance.

Our family business was started by an immigrant who came through Ellis Island and immediately made a contribution to his new country. I'm sure that he never dreamed that three generations later, the federal government would be a partner in the family business--as it is the business partner of every small business in America. Unfortunately, it's a partner that makes no contribution to the bottom line; it only drains the till.

Attachment A

American Subcontractors Association
National Associations' Council

ADSC: The International Association of Foundation Drilling Contractors
American Architectural Manufacturers Association
American Fire Sprinkler Association
American Institute of Steel Construction
Architectural Precast Association
Association of the Wall & Ceiling Industries - International
Ceiling and Interior Systems Construction Association
Concrete Sawing & Drilling Association
Independent Electrical Contractors
Institute of the Ironworking Industry
Insulation Contractors Association of America
National Association of Brick Distributors
National Association of Elevator Contractors
National Fire Sprinkler Association
National Glass Association
National Ornamental & Miscellaneous Metals Association
National Roofing Contractors Association
National School Supply and Equipment Association
Painting and Decorating Contractors of America

Attachment B

April 21, 1989

Ms. Marjorie Ashby
Office of GSA Acquisition Policy
and Regulations
General Services Administration
18th & F Streets, N.W.
Room 4026
Washington, D.C. 20405

Re: GSAR Notice No. 5-255
(54 Fed. Reg. 12251)

Dear Ms. Ashby:

The American Subcontractors Association (ASA) is a national trade association with more than 8,000 firms representing all major construction trades in 60 chapters. In addition to its individual company members, ASA represents 15 other specialty trade associations with members of their own.

Many ASA members perform construction for the federal government. Sometimes they serve as prime contractors, contracting directly with the federal government. More often, they serve as subcontractors dealing with the government only through a prime contractor. In both situations, these specialty trade contractors have a direct and real interest in the federal government's construction program. Therefore, ASA is very concerned about the sweeping changes to the Equitable Adjustments clause proposed by GSA, particularly since GSA provides no justification for the proposed change.

In light of the scope of the proposed change, ASA requests GSA to extend the comment period for at least another 60 days to June 23, 1989, in order to allow the many small businesses that will be affected by the proposal to review and comment. An extension of the comment period also will allow the proposal to be reviewed by the GSA Administrator and the FAR Council, as required by the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100-679), to determine if it is necessary for the GSAR to differentiate from the FAR in this regard.

AMERICAN SUBCONTRACTORS ASSOCIATION 1004 DUKE STREET, ALEXANDRIA, VA 22314-3512
(703) 684-3450

In the meantime, ASA plans to ask the Administrator of the Office of Federal Procurement Policy to review the proposal to determine whether it is inconsistent with the FAR and to deny the promulgation of the regulation if he determines that it is inconsistent.

In addition, ASA disagrees with GSA that the proposal does not include information collection requirements that require the review and approval of OMB's Office of Information and Regulatory Affairs. Therefore, ASA plans to request such a review by OIRA.

ASA's specific comments on the proposal follow:

552.243-71(a), Contractor Submission of a Proposal

This provision requires a contractor to submit a proposal to the Government within 30 days after a request by the Contracting Officer or the Contracting Officer's representative. ASA recommends that this provision be clarified to state that the Government's request must be in writing and be signed by the Contracting Officer.

In addition, ASA recommends that the Government be required to respond to the proposal in writing, and within the time frame specified for a proposal from a contractor, or within 30 days, whichever is less.

552.243-71(b), Request for Time Extension

This clause would require a contractor to try to determine the impact of the proposal on the work, in the face of a myriad of unknowns. For example, the Contractor does not know if or when the Government is going to issue the modification. Therefore, the Contractor should be permitted to reserve its right to make future claims. ASA recommends that this clause be deleted.

552.243-71(c), Itemized Breakdown in Proposal

The burden imposed by this clause is enormous. First, it eliminates the $5,000 threshold for the submission of detailed price breakdowns. The GSA threshold already was below the threshold for certified pricing data established in the FAR (15.804). ASA strongly objects to the elimination of the threshold and recommends that the threshold be raised to that in the FAR.

In addition, the clause would require that where proposal costs are in excess of $25,000, signed subcontractor proposals for each tier shall accompany the proposal. Again, this is extremely burdensome and does not parallel the FAR.

The FAR requires that pricing data from prospective subcontractors be submitted only in support of each subcontract cost estimate that is $1,000,000 or more; both more than $100,000 and more than 10 percent of the prime contractor's proposed price; or when it is considered to be necessary for adequately pricing the prime contract. Although occasionally a subcontractor's pricing data may be necessary to adequately price the prime contract, GSA should not suppose that it is necessary on every occasion.

In construction, prime contractors often prepare their own estimates, particularly for small change orders. The subcontract documentation provision will force prime contractors to obtain "quotations" from subcontractors on each change. The burden of this clause is further magnified when the definition of "subcontractor" is deemed to include, as the FAR does, to include small purchase-vendors and service providers that are ill-equipped and often unwilling to prepare documentation for small orders. These problems further document the need to parallel the FAR.

552.243-71(e)(6), Overhead

The term "overhead" is ambiguous and vague, and, as a result, has fallen into disuse. Traditionally, "overhead" has been applied to home office costs that benefit many contracts, and also to various types of field support costs that only may support one contract. The FAR makes a clearer distinction in its use of "direct" and "indirect" costs. ASA urges GSA to make the same distinction.

More serious than the use of the term "overhead," is GSA's attempt to deny the use of the Eichlaey formula or any other formula for calculating overhead other than as a percentage of total direct costs. ASA strenuously objects to this provision.

ASA recognizes GSA's long standing objection to compensating contractors for delays caused by contract modifications, even though GSA is ever eager to impose liquidated damages for contractor delay. The facts repeatedly have demonstrated--and the boards and the courts repeatedly have ruled--that contractors are entitled to impact costs created by modifications and that

"mark-up" should adequately compensate the contractor. This proposed clause again is a substantive and unnecessary deviation from the FAR.

FAR 52.243-4(d), which this proposal purports to supplement, provides that a contractor is entitled to an equitable adjustment for any "increase . . . in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order . . . ." GSA's proposal would put a ceiling on the contractor's recovery for many indirect costs, even though the change increased such costs beyond the ceiling. This predetermination that a contractor is not entitled to recover its increased overhead conflicts with the FAR. It also conflicts with the basic cost principles on composition of total costs and with FAR 31.2, which prescribes the use of cost principles for construction contracts.

The GSA-proposed rule also would preclude a contractor from receiving compensation for increased indirect costs, or overhead created by a Government delay or change that did not increase the contractor's direct cost. It should be evident that if a contractor's work is suspended for an indefinite period, its indirect costs will continue. The Government should bear a part of these costs.

552.243-71(f), Profit and Overhead

This clause is unclear. There is no explanation or obvious meaning of the terms "combined and profit" in the chart. Furthermore, no explanation is given for limiting the rate of profit and overhead to ten percent. Indeed, the FAR and prior board and court rulings indicate that a contractor is entitled to actual overhead as long as it can be proven.

552.243-71(g), Credit for Deleted Work

This clause requires that equitable adjustments for deleted work include credit for overhead and profit, without qualification or condition. It ignores well-established precedent that some deletions have no impact on overhead or indirect costs. Indeed, under the FAR, no downward adjustment is warranted unless there has been an actual cost decrease. This proposed clause rejects the case-by-case nature of equitable adjustments and, once again, creates an unnecessary deviation from the FAR.

552.243-71(i), Change Order Accounting

This clause would require all construction contractors to contemplate doing change order accounting by providing a contractor to give the contracting officer notice when expected costs may exceed 75 percent of the stated limit within the next 60 days. In order to comply with this provision, a contractor would have to accurately segregate and forecast costs incurred for the changed work. In most instances, this would require a contractor to modify its accounting system. In other instances, for example when dealing with a differing site condition, it may be impractical if not impossible. Before a contracting officer requires a contractor to comply with this requirement, the contracting officer, at a minimum, should determine that:

(1) the specific circumstances under which the changed work is to be performed requires change order accounting;

(2) the contractor's accounting system is adequate to track these costs; and

(3) such a procedure will be cost effective.

It also should be noted that the FAR does not require change order accounting for construction projects. Once again, this clause would seem to establish a burdensome and unnecessary differentiation from the FAR.

552.243-71(i), Profit Guidelines

This clause generalizes that "risks decrease as the work progresses." This, more often than not, is untrue in the construction process. This is particularly the case when changes have been made that either were not or could not have been contemplated by the Government nor the contractor when the contract was signed. ASA objects to GSA directing its contracting officers to negotiate changes based on the questionable assumption of decreasing risks. In any event, this clause is consistent with the flexible standard of profit policy in FAR 15.9.

Conclusion

ASA is concerned about the sweeping changes set forth in the GSA proposal. Therefore, we urge GSA to undertake a thorough review

of its own procedures, the Federal Acquisition Regulation, and the comments submitted before taking further steps to promulgate such a burdensome rule.

Sincerely,

E. Colette Nelson

E. Colette Nelson
Director of Government Relations

Attachment C

April 21, 1989

Mr. Allan V. Burman
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
17th & Pennsylvania Avenue, N.W.
Washington, D.C. 20503

Dear Mr. Burman:

The General Services Administration has proposed a rule concerning construction contract modifications (GSAR Notice No. 5-255), which, in ASA's opinion, establishes a number of substantive and unnecessary deviations from the Federal Acquisition Regulation. A copy of ASA's comments on the GSA proposed rule is enclosed.

ASA hereby formally requests that you exercise your authority under Public Law 100-679 and determine whether the GSA proposed rule is consistent with the FAR. If you determine that the proposed rule is inconsistent with the FAR, we ask that you deny its promulgation.

We look forward to your response within 60 days.

Sincerely,

E. Colette Nelson

E. Colette Nelson
Director of Government Relations

Enclosure

AMERICAN SUBCONTRACTORS ASSOCIATION, INC.
1004 DUKE STREET, ALEXANDRIA, VA 22314-3512
(703) 684-3450

Attachment D

April 21, 1989

Mr. S. Jay Plager
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
17th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20503

Dear Mr. Plager:

The General Services Administration has proposed a rule concerning construction contract modifications (GSAR Notice No. 5-255), which, it claims "does not contain information collection requirements that require the approval of OMB under 44 U.S.C. 3501 et seq." In ASA's opinion, this is not true.

Indeed, the GSA proposed rule requires both construction prime contractors and subcontractors to develop, maintain and submit extensive pricing data that is not currently required under either the GSAR or the FAR. See enclosed copy of ASA comments on the GSA proposed regulation.

ASA hereby formally requests that you review the GSA proposed rule to determine whether the additional paperwork requirements are necessary, how they fit into GSA's "paperwork budget," and whether they are necessary to achieve the goals of efficient construction procurement.

We look forward to your response.

Sincerely,

E. Colette Nelson

E. Colette Nelson
Director of Government Relations

Enclosure

AMERICAN SUBCONTRACTORS ASSOCIATION, INC.
1004 DUKE STREET, ALEXANDRIA, VA 22314-3512
(703) 684-3450

Senator DIXON. Thank you, Ms. Norberg.
Nice to have you here, Ms. Acevedo.

STATEMENT OF ELAINE ACEVEDO, DIRECTOR OF GOVERNMENT AFFAIRS, FLORISTS' TRANSWORLD DELIVERY ASSOCIATION, WASHINGTON, DC, REPRESENTING THE SMALL BUSINESS LEGISLATIVE COUNCIL AND NATIONAL SMALL BUSINESS UNITED

Ms. ACEVEDO. Thank you.

I am Elaine Acevedo, a member of the board of directors of the Small Business Legislative Council and director of Government affairs for the Florists' Transworld Delivery Association, otherwise known as FTD. Today I am representing both SBLC and the National Small Business United.

We support permanent reauthorization of the Office of Information and Regulatory Affairs (OIRA). Indeed, we believe the office should be strengthened so that it can better achieve the objectives of the Paperwork Reduction Act. Someone has to minimize Federal paperwork burdens on individuals and businesses. Someone must minimize the Government's cost of collecting, maintaining, using, and disseminating information. Someone has to evaluate the necessity of information collected by the Government. And we need a Federal agency to coordinate all of the various Federal information policies to evaluate the burdens as whole.

There is much to be done to stem the flood of paperwork which is drowning millions of small businesses. For instance, we think the OIRA Administrator should be required to determine whether an agency rule or form complies with the Paperwork Reduction Act. Such a requirement might allow us to avoid situations where Government requires paperwork without even considering what burdens are imposed on businesses.

A recent example. The Federal Supply Service proposed requiring contractors to submit paperwork detailing chemical hazards with every unit of every shipment. Fortunately in this case, the Administrator was responsive to concerns raised by the OIRA Administrator on behalf of SBLC.

But there is no formal procedure to deal with a problem such as this. This is the reason we are calling on Congress to strengthen the Paperwork Reduction Act.

We are especially concerned by claims that the Paperwork Reduction Act does not give the director of OMB the authority to determine whether a particular paperwork requirement is necessary. They claim that OIRA cannot intercede when an agency's substantive policymaking authority is involved. But I ask you when does an agency ever require paperwork which does not involve its basic mission. If OIRA were not allowed to evaluate whether paperwork is necessary or useful to accomplish a particular policy, the Paperwork Reduction Act would be successfully gutted.

We urge this Subcommittee to clarify the OMB Director's authority under section 3504(c)(2) of the Paperwork Reduction Act to review the necessity and practice utility of paperwork requirements.

Congress frequently passes new laws that impose enormous paperwork burdens with little or no consideration of the impact on

individuals and business. Witness immigration reform and the creation of the I-9. Witness tax reform and the creation of the new W-4. Witness Section 89.

As you know, Congress enacted Section 89 as part of a massive tax package. There was minimal discussion and even less understanding of its impact. During the 101st Congress, four Committees, including this one, have held hearings to study the impact of Section 89. Members of Congress and their staffs have spent a tremendous amount of time and effort to understand the problems and to develop a solution.

But why should we be going through all this very necessary analysis after the law is passed? Why not before?

SBLC and NSBU believe that Congress must begin to look at itself. Senate rules do require an evaluation of the regulatory and paperwork impact in Committee reports on legislation. But many Committees only include a perfunctory review or ignore the requirement altogether. The House does not even have a requirement.

The Paperwork Reduction Act charges OMB and the agencies with reviewing proposed legislation and submitting comments on the information collection burdens to Congress. But in general this does not happen. SBLC and NSBU believe Congress should demand that agencies' comments on proposed legislation include a discussion of the impact of the legislation's information collection and paperwork requirements. In addition, we urge you to assure that other Committees in the Senate comply with the Senate rule requiring such information to be included in Committee reports.

In summary, SBLC and NSBU strongly support the permanent reauthorization of OIRA. OIRA is the one place in Government that focuses on the cumulative impact of Government regulations, data collection and paperwork. Government must search out the most efficient and the least burdensome ways to meet information needs. The OIRA review of agency regulations should be kept intact with its other information policy responsibilities.

Both of the organizations I represent today will be happy to work with Congress to strengthen the PRA and to develop procedures so that OIRA can perform its job more effectively.

Thank you.

[The prepared statement of Ms. Acevedo follows:]

Statement on

Implementation of the Paperwork Reduction Act

presented by

Elaine Acevedo

on behalf of

SMALL BUSINESS LEGISLATIVE COUNCIL
1025 Vermont Avenue, N.W.
Suite 1201
Washington, D.C. 20005
Telephone: 1-202-639-8500

NATIONAL SMALL BUSINESS UNITED
1155 15th Street, N.W.
Suite 710
Washington, D.C. 20005
Telephone: 1-202-293-8830

before the

Subcommittee on Government Contracting and Paperwork Reduction
Committee on Small Business
United States Senate

September 7, 1989

I am Elaine Acevedo, a member of the Board of Directors of the Small Business Legislative Council (SBLC) and Director of Government Affairs for the Florists' Transworld Delivery Association. Today, I am representing both SBLC and National Small Business United (NSBU).

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of over four million small businesses in manufacturing, retailing, distribution, professional and technical services, construction, transportation and agriculture. A list of our members is attached (Attachment A).

National Small Business United is a voluntary association of small businesses from across the country. Founded from a merger of the National Small Business Association, the nation's oldest small business association, and Small Business United, NSBU has 50,000 members and 19 regionally-affiliated member organizations. Member businesses range in size from the very smallest to those of hundreds of employees (NSBU considers a small business to be one with fewer than 500 employees).

Reducing the information collection and paperwork burdens imposed by the federal government on small businesses was one of the principal recommendations of the delegates to the 1980 White House Conference on Small Business. We worked closely with Senator Lawton Chiles and other congressional leaders in the development of the legislation that became the Paperwork Reduction Act of 1980. Today, controlling the growth of information requirements continues to be a principal concern of the small businesses we represent.

SBLC and NSBU support permanent reauthorization of the Office of Information and Regulatory Affairs (OIRA). Indeed, we believe the Office should be strengthened so that it can better achieve the objectives of the Paperwork Reduction Act (PRA) to minimize federal paperwork burdens on individuals and businesses; to minimize the government's cost of collecting, maintaining, using, and disseminating information; to maximize the usefulness of information collected by the government; and to coordinate federal information policies.

We believe the PRA has been a success. There still is much to be done to stem the flood of paperwork which is drowning millions of small businesses.

One thing that can be done is to strengthen the public protection requirements of the PRA. This can be achieved through a provision similar to one added by Congress last year to the Office of Federal Procurement Policy Act (Public Law 100-679). This provision requires the Administrator of OFPP to respond within 60 days to a public request for a determination of whether a procurement rule is consistent with the Federal Acquisition Regulation. We think a similar requirement of the OIRA Administrator would make the agency more responsive to the concerns of the public.

Let me give you an example of a situation where such a provision would have been particularly useful. On April 27, the General Services Administration's Federal Supply Service published in the Federal Register a proposed contract modification, requesting public comment by May 30, and announcing implementation on June 7. How thorough a review of the public comments could FSS conduct during the seven days allowed for review? How seriously did FSS intend to take any public comments when it announced the

effective date at the same time it requested public comment? Yet the FSS proposal would have required a contractor to supply a Material Safety Data Sheet for each unit of issue in a shipment. This requirement would have imposed extensive new paperwork requirements on FSS contractors beyond those intended by OSHA. Nonetheless, FSS made no mention of the PRA in its public notice.

SBLC called the attention of this problem to the OIRA Administrator (Attachment B); and, fortunately, Dr. Plager was most responsive. Indeed, FSS postponed its proposal "indefinitely" in the face of OIRA's concerns. However, there is no formal procedure in place to deal with a situation such as this. We believe a procedure similar to that in the OFPP Act would be most effective.

There have been other situations where the PRA has worked. For example, as reported to SBLC by the American Gear Manufacturers Association, the gear manufacturing industry recently was confronted with three different agencies wanting to investigate its competitive position in U.S. and global markets. Under the leadership of OMB, the U.S. International Trade Commission, the U.S. Department of Commerce, and the U.S. Department of Defense combined their information requirements into a single survey to be conducted by the ITC (See Attachment C).

This is the way PRA and OIRA should work. Unfortunately, all too often it does not. That is the reason we are calling on Congress to strengthen the Paperwork Reduction Act.

One of our principal concerns is with claims by some that the Paperwork Reduction Act does not give the Director of the Office of Management and Budget (OMB), and thus OIRA the authority to determine whether a particular paperwork requirement is necessary or useful to accomplish a particular substantive policy. They claim that OIRA cannot intercede when an agency's substantive policy making responsibilities or authority is involved. Such claims force one to ask the very basic question: What paperwork requirements would an agency be creating that does not involve its basic mission? If one takes these claims seriously, then OIRA has no authority at all.

These claims represent an erroneous interpretation of the PRA and remove the OMB Director's authority under Section 3504(c)(2) of the PRA to review the "necessity" and "practical utility" of paperwork requirements. The only interpretation which preserves both an agency's substantive mission and the PRA's purposes is that the agency makes the policy and OMB determines whether a proposed paperwork requirement is necessary or useful in achieving the policy. That is, OMB cannot and should not tell an agency that it cannot meet its mission; however, it can and must tell an agency that it must meet its mission in the most effective, efficient and economical way possible.

Perhaps, the most telling example of this debate is the Occupational Safety and Health Administration's Hazard Communication Standard. It is this Standard which has led to the U.S. Supreme Court's review of the Third Circuit's decision in United Steelworkers of America v. Pendergrass. While I do not think anyone, least of all me or the organizations I represent today, opposes the HazCom Standard or its goal of protecting employees from

hazardous substances, there can be no doubt that it imposes an incredible paperwork burden on U.S. businesses. Just review the record compiled by this committee during its hearing on June 22.

SBLC and NSBU urge Congress to resolve the debate over OMB's intended role in regulating the paperwork burden imposed by administrative agencies by clarifying that OMB has the authority to determine whether an agency's proposed information collection and paperwork requirements are practical and necessary and to direct that agency to meet its mission in a more efficient and economical manner.

Another example of the impact of heavy paperwork requirements on small businesses can be found in the construction industry. All contractors performing federal work must file payroll reports with the U.S. Department of Labor on a weekly basis. They must document in detail that they have paid "prevailing wages" on construction projects covered by the Davis-Bacon Act. The payroll reporting requirement is part of the Copeland "Anti-Kickback" Act.

This paperwork requirement has a chilling effect on the participation of small and minority-owned businesses in bidding for federal work. About 80 percent of all construction industry employers are firms with nine or fewer full-time workers. To comply with the existing paperwork requirements on federal construction, these companies would likely be forced to hire additional clerical workers and purchase recordkeeping equipment.

Rather than meet such heavy paperwork requirements, many small businesses simply choose not to participate in federal construction projects. The resulting decrease in competition, along with other

constraints under the Davis-Bacon Act, adds over $1 billion per year to total federal construction costs, according to Congressional Budget Office estimates.

Currently, there are 11 million payroll reports submitted annually to contracting agencies because of the Copeland Act. Overall, these reports cost an estimated 5.5 million hours of industry employee time. Paperwork costs to contractors have been estimated at $100 million a year by the Department of Labor.

One of the most serious abusers of "information collection and reporting requirements" is the Congress itself. Congress frequently passes new laws that impose enormous paperwork burdens with no consideration to the impact on individuals and businesses. Witness immigration reform and the creation of the I-9. Witness tax reform and the creation of the new W-4. Witness Section 89.

Many small businesses report that they spent significant sums on publications and for seminars to learn how to comply with Section 89. This, of course, must be added to the cost of management time not spent attending to business. This is wasted money because, thankfully, the members of this Committee, and other members of Congress, are in the process of simplifying the requirements of Section 89. But while we are very thankful for your efforts to correct this situation, we cannot forget that Congress created this mess in the first place.

As you know, Congress enacted Section 89 as part of a massive tax package. There was minimal discussion and even less understanding of its impact. During the 101st Congress, four committees, including this one, have held hearings to study the impact of Section 89. Members of Congress

and their staffs have spent a tremendous amount of time and effort to understand the problem and to develop a solution. My question, one being asked by small businesses all over the country, is: Why didn't Congress do this three years ago?

SBLC and NSBU believe that Congress must take responsibility for its own actions in contributing to the growth of paperwork. As noted above, Section 89 is only one of many examples of how Congress passes new laws that impose enormous paperwork burdens with no consideration of the impact on small businesses and on the economy. Senate rules already require an evaluation of the regulatory and paperwork impact in committee reports on legislation; but many committees include only a perfunctory review or ignore the requirement altogether. The House has no such requirement.

The Paperwork Reduction Act itself recognizes that Congress frequently is the culprit in the creation of paperwork. It explicitly charges OMB and the agencies with reviewing proposed legislation and submitting comments on the information collection and paperwork burdens to Congress. Yet neither OMB nor the agencies have initiated comments to Congress on the paperwork requirements of proposed legislation; and Congress has not demanded such comments.

SBLC and NSBU believe Congress should demand that agencies' comments on proposed legislation include a discussion of the impact on individuals and businesses of the legislation's information collection and paperwork requirements. In addition, we urge you to assure that other committees in the Senate comply with the Senate rule requiring such information to be included in committee reports.

Summary

In summary, SBLC and NSBU strongly support the permanent reauthorization of OIRA. Information collection and paperwork problems will not go away; the solution must be a permanent one. We believe that OIRA is the one place in government that focuses on the meaning of the cumulative impact of government regulations, data collection and paperwork. Government must search out the most efficient and the least burdensome ways to meet information needs.

In addition, SBLC and NSBU strongly believe that OIRA review of agency regulations should be kept intact with its other information policy responsibilities. We do not know how the Act's purpose of minimizing the overall burden of paperwork on the public and business can be met if regulatory responsibilities are separated from information responsibilities.

SBLC and NSBU also recommend that a provision be added to the Act to require the OIRA Administrator to respond within 60 days to a public request for a determination of whether an agency rule or form complies with the PRA. The model for such a procedure is contained in the OFPP Act.

Finally, SBLC and NSBU request that Congress take steps to mitigate its own tendency to create and impose new paperwork burdens on individuals and businesses. The PRA already provides a mechanism to help in this process; the mechanism should be used.

Both of the organizations I represent today will be happy to work with Congress to strengthen the PRA and to develop procedures so that OIRA can perform its job more effectively.

/S1100a
Attachments

Attachment A

Members of the Small Business Legislative Council

Air Conditioning Contractors of America
Alliance of Independent Store Owners and Professionals
American Animal Hospital Association
American Association of Nurserymen
American Collectors Association, Inc.
American Consulting Engineers Council
American Council of Independent Laboratories
American Dental Trade Association
American Floorcovering Association
American Institute of Architects
American Machine Tool Distributors Association
American Road & Transportation Builders Association
American Society of Travel Agents, Inc.
American Sod Producers Association
American Subcontractors Association
American Textile Machinery Association
American Trucking Associations, Inc.
American Warehousemen's Association
Architectural Precast Association
Associated Builders & Contractors
Associated Equipment Distributors
Associated Landscape Contractors of America
Association of Physical Fitness Centers
Association of Small Business Development Centers
Association of the Wall and Ceiling Industries-International
Automotive Service Association
Bowling Proprietors Association of America
Building Service Contractors Association International
Business Advertising Council
Christian Booksellers Association
Council of Fleet Specialists
Electronics Representatives Association
Florists' Transworld Delivery Association
Helicopter Association International
Independent Bakers Association
Independent Bankers Association of America
Independent Medical Distributors Association
International Association of Refrigerated Warehouses
International Bottled Water Association
International Communications Industries Association
International Franchise Association
Latin American Manufacturers Association
Machinery Dealers National Association
Manufacturers Agents National Association
Mechanical Contractors Association of America, Inc.
Menswear Retailers of America
NMTBA-The Association for Manufacturing Technology
National Asphalt Pavement Association
National Association for the Self-Employed
National Association of Brick Distributors
National Association of Catalog Showroom Merchandisers
National Association of Chemical Distributors
National Association of Development Companies
National Association of Home Builders
National Association of Investment Companies
National Association of Manufacturing Opticians
National Association of Passenger Vessel Owners
National Association of Personnel Consultants
National Association of Plumbing-Heating-Cooling Contractors
National Association of Realtors®
National Association of Retail Druggists
National Association of Small Business Investment Companies
National Association of the Remodeling Industry
National Association of Truck Stop Operators
National Association of Women Business Owners
National Campground Owners Association
National Candy Wholesalers Association
National Chimney Sweep Guild
National Coffee Service Association
National Council for Industrial Innovation
National Electrical Contractors Association
National Fastener Distributors Association
National Grocers Association
National Independent Dairy-Foods Association
National Knitwear & Sportswear Association
National Lumber & Building Material Dealers Association
National Moving and Storage Association
National Office Products Association
National Paperbox & Packaging Association
National Parking Association
National Precast Concrete Association
National Shoe Retailers Association
National Society of Public Accountants
National Tire Dealers & Retreaders Association
National Tooling and Machining Association
National Tour Association
National Venture Capital Association
Opticians Association of America
Petroleum Marketers Association of America
Printing Industries of America, Inc.
Professional Plant Growers Association
Retail Bakers of America
SMC/Pennsylvania Small Business
Small Business Council of America, Inc.
Society of American Florists
Specialty Advertising Association International
United Bus Owners of America

1025 Vermont Avenue, N.W., Suite 1201, Washington, DC 20005
PHONE NO.: (202) 639-8500 / FAX NO.: (202) 347-4777

Attachment B

May 30, 1989

The Honorable S. Jay Plager
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
17th Street & Pennsylvania Avenue, N.W.
Washington, DC 20503

Dear Dr. Plager:

The Federal Supply Service of the General Services Administration has proposed a contract modification (54 Fed. Reg. 18155 (April 27, 1989)), which has no mention of the need for OMB approval of the information collection requirements. Yet the proposal would, in SBLC's opinion, significantly increase the information collection and transfer requirements on GSA contractors. See enclosed copy of the SBLC comments on the GSA proposed contract modification.

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of over four million small businesses in manufacturing, retailing, distribution, professional and technical services, construction, transportation and agriculture. A list of our members is attached.

SBLC hereby formally requests that you review the GSA proposed rule to determine whether the additional paperwork requirements are necessary, how they fit into GSA's "paperwork budget," and whether they are necessary to achieve the goal of both protecting the government's employees under OSHA's Hazard Communication Standard and efficient and economical procurement.

We look forward to your response.

Sincerely,

T. Peter Ruane

T. Peter Ruane
Chairman

TPR/S1032
Enclosure

1025 Vermont Avenue, NW/Suite 1201/Washington, D.C. 20005/(202) 639-8500

May 30, 1989

General Services Administration
Federal Supply Service
Office of Commodity Management (FC)
Operations Management Division (FCO)
1941 Jefferson Davis Highway
Crystal Mall Building #4, Room 522
Arlington, VA 22202

Re: Material Safety Data Sheets
(54 Fed. Reg. 18155 (April 27, 1989))

Gentlemen:

The Small Business Legislative Council is concerned about the impact the above-cited proposal will have on small business contractors with the General Services Administration's Federal Supply Service. The proposed contract clause would significantly increase the paperwork requirements of such contractors and expand their potential liability.

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of over four million small businesses in manufacturing, retailing, distribution, professional and technical services, construction, transportation and agriculture. A list of our members is attached.

The Occupational Safety and Health Administration's Hazard Communication Standard was designed to give employers the information they need to protect employees from exposure to hazardous substances. It is apparent that, through this proposal, FSS is attempting to shift part of its responsibility to protect government employees to its contractors. In doing so, FSS creates and imposes extensive new regulatory and paperwork requirements on its contractors beyond those intended by OSHA.

For example, clause (b) requires a contractor to supply an MSDS for each unit of issue in a shipment. This imposes substantial requirements beyond the OSHA Standard, which merely requires a supplier to include one MSDS

1025 Vermont Avenue, NW/Suite 1201/Washington, D.C. 20005/(202) 639-8500

with the initial shipment of a hazardous product. Suppliers have to send a new MSDS only when the chemical makeup of the product changes. The end user of the product, in this case the government, must determine whether its employees will use the product in a way that will create a hazard. The end user then must make and distribute the necessary copies of the MSDS to the locations where its employees are using the product.

The "multiple copy" requirement is both expensive and confusing. The cost and time associated with making multiple copies of MSDSs, which can run as long as 15 pages, would be prohibitive for many small businesses and unnecessarily increase the cost to the government. Does FSS want a contractor to send multiple copies of the MSDSs for consumer products, such as Pepto-Bismol? How does FSS recommend that a contractor handle an MSDS from one of the many manufacturers that routinely send MSDSs for their entire product line when one product is purchased? How many copies of MSDSs for wood dust would be required for a shipment of lumber?

As a further example of the additional burdens imposed by the proposed rule, clause (a) requires a contractor to prepare an MSDS for each hazardous substance in a shipment to FSS and to include in that MSDS information beyond that required by OSHA. Yet OSHA requires only a chemical manufacturer or importer to make the hazard determination and prepare an MSDS. Most government contractors are not manufacturers and, thus, would not prepare an MSDS. A downstream seller of the product (suppliers, wholesalers, dealers, retailers, etc.) simply is required to pass the MSDS on to the next user. If the downstream seller modifies that MSDS in any way, it assumes the responsibility and liability for the accuracy of the information contained in the MSDS.

Finally, it is unclear what FSS intends by an "MSDS Contact Point" under clause (f). Under the OSHA Standard, each MSDS is required to include a telephone number for further information. Again, this phone number would typically be that of the manufacturer. Does FSS mean this phone number to be that of the individual in the contractor's business who is responsible for collecting and distributing MSDSs?

In light of the scope of the proposed change, SBLC requests GSA to extend the comment period for a least another 60 days to July 29, 1989, in order to allow the many small businesses that will be affected by the proposal to review and comment. This extension also will allow GSA to conduct a thorough regulatory review and analysis of the impact of the proposal on its contractors, particularly small business contractors. Finally, an extension of the comment period will allow the proposal to be reviewed by the GSA Administrator and the FAR Council, as required by the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100-679), to determine if it is necessary for the FSS contract to differentiate from the GSAR and the FAR in this regard.

In the meantime, SBLC plans to ask the administrator of the Office of Federal Procurement Policy to review the proposal to determine whether it is consistent with the FAR and to deny the promulgation of the contract clause if he determines that it is inconsistent.

In addition, SBLC notes that the proposal published in the Federal Register did not include any mention of the additional information requirements imposed by the rule that require the review and approval of the OMB's Office of Information and Regulatory Affairs. Therefore, SBLC plans to request such a review by the administrator of OIRA.

Sincerely,

T. Peter Ruane

T. Peter Ruane
Chairman

TPR/S1030
Enclosure

Attachment C

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

March 22, 1989

The Honorable Anne Brunsdale
Acting Chairman
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Dear Madame Chairman:

The U.S. gear manufacturing industry produces components that are essential to most industrial and transportation equipment. The industry, which has experienced a dramatic increase in imports since 1983, is unable to assess properly its trade concerns because U.S. government and private data on the industry's production and trade composition are fragmented and incomplete. The American Gear Manufacturers Association has formally requested assistance providing the industry with a comprehensive set of objective data.

Pursuant to Section 332(g) of the Tariff Act of 1930, I request that the U.S. International Trade Commission conduct an investigation and prepare a report on the competitive position of the U.S. gear industry in U.S. and global markets.

Specifically, the Commission report should provide to the extent possible the following:

- Profiles of the U.S. industry and major foreign industries;
- A descriptive assessment of the global market for gears, to the extent possible, using categories of gear products most useful to the industry;
- A comparison of U.S. and foreign producers' strengths and weaknesses in such areas as: (1) raw material, labor, and capital availability; (2) technological capabilities; (3) extent of plant and equipment modernization; (4) end-product quality, pricing, and service support; and government involvement.
- U.S. and foreign industry and U.S. consuming industry views on market direction and potential for the U.S. industry.

The Commission should provide its completed report no later than 12 months from receipt of this request.

The Honorable Anne Brunsdale
Page Two

I understand that Defense Department agencies, led by the Navy, have asked the U.S. Department of Commerce to conduct a study with respect to the gear industry under section 705 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2155). In this study, Commerce will be required to collect and analyze certain data identical to that which the Commission will be required to collect in the section 332 study as well as certain additional data.

To minimize the burden placed on industry in supplying data to the Government, the Office of Management and Budget, acting pursuant to its authority under the Paperwork Reduction Act, has indicated that the information should be requested of industry respondents through a single survey. Since the Commerce study requires that questionnaires be sent only to U.S. gearmakers, whereas the section 332 study has a broader scope and will query other groups in addition to the U.S. gearmakers, the section 332 questionnaire should be designed to gather what additional information is needed for the Commerce study.

Accordingly, we ask that your office work with appropriate officials of the Department of Commerce in the development of portions of the questionnaire that will pertain to Commerce's responsibilities. When you have assembled this data it should be transmitted directly to Commerce in a mutually agreeable form along with whatever data gathered in response to our section 332 request is appropriate.

In accordance with USTR policy as set forth in my letter to you on February 16, I direct you to mark as "confidential" such portions of the Commission's report and its working papers as my Office will identify in a classification guide. Information Security Oversight Office Directive No. 1, (sections 2001.2 and 21, implementing Executive Order 12356, sections 2.1 and 2.2.) requires that the classification guides identify or categorize the elements of information which require protection. Accordingly, I request that you provide my Office with an outline of this report as soon as possible. Based on this outline and my Office's knowledge of the information to be covered in the report, a USTR official with original classification authority will provide detailed instructions. The Commission's assistance in this matter is greatly appreciated.

Sincerely,

Carla A. Hills

CAH:mjd
cc: U.S. Department of Commerce

Senator DIXON. Thank you very much, Ms. Acevedo.

I take it from the testimony of all three of you that you all agree that this particular act has been a useful tool to reduce requirements regarding Government paperwork and things of that kind. Is that right?

In other words, notwithstanding, Mr. Lauzen, the sense of your folks is that paperwork continues to increase, and so forth, and I get the sense that you feel this is a useful device to reduce Government paperwork. Is that right?

Mr. LAUZEN. That is right.

Senator DIXON. Surely you feel that way with your button on, Ms. Norberg.

Ms. NORBERG. Yes.

Senator DIXON. And you as well.

Ms. ACEVEDO. Yes, I do.

Senator DIXON. You heard my statement about the conference taking place next week. I think it is clear that by kind of a back door method, the passage of that House bill would, in effect, cripple the enforcement powers of this agency that you all seem to think has done a very useful thing. Is that right?

Ms. ACEVEDO. Yes.

Senator DIXON. So, I would hope that the various small business groups in the country are aware of this and will get the word to the conferees by next Tuesday about your position in this matter.

Do you think there is more that can be done to strengthen this act? One of you had a suggestion—was it you Ms. Acevedo?

Ms. ACEVEDO. Yes, I did. As I said, I think that like the Office of Federal Procurement Policy, there should be a provision so that upon public request, the agency should have a 60 day review period for the paperwork requirements of regulations. They should be required to do that. At the current time, there is no mechanism for that.

Senator DIXON. All right, that is something that we will look into. I think it is a useful suggestion.

Ms. Norberg, do you have anything further you would like to suggest?

Ms. NORBERG. I agree, and also with the simplification issues in total. But, you know, I understand the problem politically that people are having with this act or its supposed use or intended usages in wrong areas. I can speak personally on the basis that—obviously, you recognize, Senator, that the act itself shouldn't be totally thrown out the window just because it might be misused. But there are provisions by which shortening the term on which OIRA can sit on something or use that review process or table something that it is reviewing, would hopefully substantially alleviate that agency being told or encouraged or having it suggested that it hold things, in order to deter good legislation.

And I don't think any of the small businesses or any of the citizens in this country want to prevent safety legislation or EPA legislation or any of those things from going through. But let's face it. It takes just as long to get some of those bills passed initially as it does to get the implementation and the FAR done subsequently.

So, we strongly support what is being done, and we have seen, I think, this regulation used with the W-4 form. Section 89 has also been mentioned.

If I may, I might mention one thing that has been told to us by a very prominent CPA-attorney who is widely published, and in a recent seminar in Chicago, he told us that he is advising his clients, regarding Section 89, to hold off until other regulations are set, because he foresees that this is going to be dealt with in the paperwork area. And he says that it would cost us so much as small businesses to comply with the regulation as currently written, that we are either going to, as the Senator from Wisconsin said, drop our insurance totally or he has suggested that we just pay the penalties. Now, that is a very, very odd suggestion for somebody in the professional accounting area.

Senator DIXON. You know, you said something in your testimony that bothered me a little bit. I am terribly concerned about the burdensome paperwork requirements in procurement matters. You suggested how long it takes you to prepare for an ordinary, private bid and what your problems are with respect to doing something with the Government. It seemed to me like it was four or five times as long, one to 6 hours compared to 10 to 20. I don't remember the exact numbers you used, but it was pretty shocking to me.

And one of the things you suggested was that every one of the different branches of the service has a different type of criteria that is employed. Well, where are we on avoiding that duplication? I heard Mr. Plager say that we try to avoid duplication. I sense that you are saying they do not avoid duplication at least in that area. I wonder whether that has been called to their attention.

Ms. NORBERG. In the example that has been drawn to the attention of ASA, I believe it is Fort McClellan that is trying to use the Procurement Integrity Act to restrict the publication or listing of the general contractors bidding on projects for DOD. And that is a prime example. Obviously, if the subcontractors cannot get a list of who the contractors are on projects related to that particular military base, we have no way to know who to send our bids to. You know, just that sort of usage of some of the acts in place is perhaps indicative of what is happening in the procurement area.

The other example was brought up by one of the gentlemen in the prior panel, the specs on a hammer. We receive specs on stairs and they could have been highly simplified. And in the private sector it is bad enough what you see on the bid documents from the architects, but when you add to that several volumes of Government procurement paperwork—for instance, the airport requirements that stack this high and that kind of thing—we don't do Government work.

And I believe that the Government—I personally believe, as a business person, that the Government is missing opportunities widely to purchase products that are of good quality and that would be good in the cost-benefit area. And I, as a taxpayer, feel that I'm the ultimate end user as a business person and a taxpayer privately also. So, if the Government is missing opportunities to buy from businesses that will not bid to the Government, such as mine, I do not know how you can tally the ultimate costs to the country.

Senator DIXON. Well, I hope you know that I created the post of Under Secretary of Defense for Acquisition. We think some progress is being made there.

Now, the recently appointed Under Secretary, John Betti, has initiated a full-scale scrub of all FAR supplements within the Defense Department. Are you folks seeing any benefits yet out there in the marketplace in connection with these efforts? I sense that you don't think you are.

Ms. NORBERG. Not in the bid documents that I have seen.

Senator DIXON. Let me ask you. This group of folks that was up here before you—do you ever have an opportunity to talk to them as you are talking to me in this Subcommittee hearing? In other words, does Mr. Plager ever visit with any of the small business folks, or does Dr. Burman in the Office of Federal Procurement ever visit with some of your folks to get your ideas about things?

Mr. LAUZEN. Not to my knowledge.

Senator DIXON. It seems to me that it would be a useful thing for them to do that once in a while, because at least those of us in elected public office, like the distinguished senior Senator from Iowa and this senior Senator from Illinois, go back home and do town hall meetings and hear your beefs there, and as constituents you come into our office and we hear your beefs there. I sometimes wonder whether other places in the Government ever listen. That bothers me a little.

I think they were very supportive of your point of view, may I say? I am quick to point that out—in the prior panel. I think you think so too. But I wonder whether it wouldn't be useful for them to get some input from representative groups, small business groups, about some of your concerns.

Mr. LAUZEN. The value of that, Senator, is demonstrated by the fact that one out of every six families in the United States is in business for themselves, approximately 100 million families and also approximately 17 million businesses. And that represents such a large segment of the country that it would be well advised to hear what the folks say out there in the town hall meetings, to hear what in the average group that you said where they are falling in the aisles laughing—one out of every six of those people is in business for themselves. Those are the people we are talking about.

Senator DIXON. Does my friend from Iowa have some questions?

Senator GRASSLEY. Yes, I do, but not long questions.

Senator DIXON. Senator Grassley.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I guess to any of you on the panel, although I do have a specific question I think that is most appropriate for Ms. Norberg.

The 1986 amendments to the Paperwork Reduction Act strengthen substantially the ability of Congress to participate in the information collection review process. From your perspective out there or for the organizations you speak for, has there been an increase in the public participation since these amendments were included in the Paperwork Reduction Act?

Ms. ACEVEDO. There was the ability for the public to at least come in for a gripe session on the Hazard Communication Stand-

ard with regard to the paperwork requirements. I'm not sure what the results of that have been.

Senator GRASSLEY. I guess I am just interested at this point—I think you have answered my question, but you believe there has been increased participation as a result of those amendments?

Ms. ACEVEDO. Based on that instance, I would say yes.

Ms. NORBERG. I do not know if you can measure it that soon because it takes so long for people to become aware that there is an opportunity to speak. And the first time you have hearings such as HazCom, people may not overcome the inertia to get there. But certainly we feel as business people that the opportunities are greater to make comments on some of these things, and that is an area where for a long time, although our legislators are receptive to our comments and input, some of the bureaucrats and the agencies, we feel, are not or, we feel, have not been. And I feel encouraged to know personally that this is now being changed to some extent.

Mr. LAUZEN. I do not have a position.

Senator GRASSLEY. Ms. Norberg, I believe, although I do not care if anybody else wants to comment. I want to refer to the Chamber of Commerce's statement before the House Committee on Government Operations, the Subcommittee on Legislation and National Security. There the chamber stated, and I quote, "Many small businesses believe that the burden of paperwork compliance bears no real relationship to the perceived public benefit."

What do you believe is necessary to ensure that the paperwork required by agencies is appropriate and necessary and beneficial to both the Government and the public?

Ms. NORBERG. I have to address that personally or as a business person at the present time, because I cannot speak for the chamber unless I consult with their staff.

Senator GRASSLEY. OK.

Ms. NORBERG. I do not think any of us want there to be no paperwork. I do not think any citizen fails to understand as a business person that, obviously, you have to have a minimum amount of paperwork. And I certainly, as a conservative business person, paper my files extensively, to the extent that they are going to be read.

Unfortunately, what we are seeing here is such an excessive amount of paperwork that people like me who have a small staff and do a lot of my own, I just don't read everything beyond a certain point. My eyeballs roll back in my head and that becomes the end of it. One of the significant problems in the construction industry per se is that the longer the documents get, the less people read them and the more problems that are created because there are misunderstandings.

So, I think the Government needs to minimize the paperwork and also, as has been mentioned before, coordinate duplication and maybe use a few photocopies and send them from agency to agency.

One of the things that has come up recently—I believe it is with the suggested OSHA revisions—is more documentation of workplace accidents in the construction industry. We know that is a big problem. But I already send this stuff to my insurance people. And if OSHA should have more documentation, they certainly could access that from the insurance industry. I think in a lot of situations you will find that the Government agencies might want to

work a little more closely with the private sector because of the computer systems which are already in place to collect some of the information for them. And perhaps that is being intended now.

Senator GRASSLEY. Do either of you want to comment?

Ms. ACEVEDO. I just think that in view of what has been happening for the last 10 years and the paperwork that has been increasing for small businesses, there has to be a way to make a requirement for paperwork one of the last considerations, one of the very last considerations, in trying to achieve a regulatory policy.

Mr. LAUZEN. My comment would be as I earlier stated, namely, to keep it as simple as possible. Our accountants and the accountants as a whole in monthly accounting type services charge approximately $3,000 a year. Their response to the survey was up to 25 percent of the cost that they charge to the clients is for the area of excessive paperwork or difficult to understand regulations.

If that could be cut down by one-half—and we believe that that would be realistic over a 3 to 5 year period of time—that the savings across that universe comes to over $5 billion a year. The theoretical level is $12 billion.

What the small business person could do with those same dollars is to improve the areas of better operating their businesses, getting into a 5 year business plan as an illustration, or as Margaret Thatcher, the Prime Minister in the United Kingdom, has done to make available to small business with business plans the cost of the Government subsidizing 50 percent of a 5 year business plan, one of the major areas that small businesses fail in in working from day to day to day. Using those same dollars that are a pure waste in trying to understand the regulations and having to hire outside companies such as my own organization on waste areas, we would much rather invest that time working with businesses to help to reduce the failure rate or to increase their level of success.

Senator GRASSLEY. I think maybe my last question, if I remember what your last statement was, takes off from there.

The chamber has recommended to OIRA that agencies identify ways to reduce paperwork before granting an OMB control number. In other words, you had said, I believe, that too often that is the last consideration.

Ms. ACEVEDO. Yes.

Senator GRASSLEY. So, maybe it would be ideal to do that before granting the Office of Management and Budget control number.

In light of the fact that many officials believe that agencies have already been placed in the unreasonable position of reducing their paperwork requirements by an act of Congress, how do you propose that agencies reduce their paperwork burden as well as formulate additional proposals before receiving OMB approval. Have you given any thought to that?

Ms. ACEVEDO. I think that the first thing that should be examined by anybody is just what the Paperwork Reduction Act requires. Is it available from any other source?

And No. 2, is the additional information really necessary and if so, why? Maybe we should starting asking ourselves why.

Senator DIXON. Very good. I want to thank the distinguished Senator from Iowa for his contribution. I want to thank you, Mr.

Lauzen, you, Ms. Norberg, and you, Ms. Acevedo. Thank you all for your contribution.

I would just like to add one thing. We intend to keep the hearing record open for 14 days to provide the small business community with an opportunity to submit additional statements for the record, including anything further that any of you want to submit for the record. Again, the record will remain open for 14 days.

Thank you all very much. This hearing is adjourned. [Whereupon, at 11:36 a.m., the Subcommittee was adjourned.]

APPENDIX

FINANCIAL EXECUTIVES
INSTITUTE

STATEMENT OF

SIDNEY SPENCER
ON BEHALF OF THE

COMMITTEE ON GOVERNMENT LIAISON
FINANCIAL EXECUTIVES INSTITUTE

Thursday
September 7, 1989

BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. SENATE

REGARDING
REAUTHORIZATION OF THE
PAPERWORK REDUCTION ACT

1001 Seventeenth Street, N.W.
Suite 1205
Washington, D.C. 20036
(202) 659-8180

I. THE FINANCIAL EXECUTIVES INSTITUTE

Mr. Chairman, the Committee on Government Liaison of the Financial Executives Institute appreciates this opportunity to express our thoughts on the reauthorization of the Paperwork Reduction Act and the Office of Information and Regulatory Affairs at the Office of Management and Budget. We compliment you for initiating the dialogue on the reauthorization of the Paperwork Reduction Act and for showing concern for the burdens imposed by the government on small businesses.

We believe that reducing the burden of government paperwork on Americans should be the primary mission of the Office of Information and Regulatory Affairs. This is an important step to help ensure that America remains competitive in world markets. FEI'S Committee on Government Liaison strongly supports the reauthorization of the Paperwork Reduction Act and encourages the Committee to promote a strong Office of Information and Regulatory Affairs to enforce the Act.

Financial Executives Institute, the leading advocate for corporate financial management, is a professional association comprised of 13,000 individual members who are senior financial and administrative officers in 7,000 business organizations throughout the United States and Canada. FEI represents business organizations of all sizes. The Committee on Government Liaison is authorized to formulate statements and positions on federal legislative and regulatory proposals that are relevant to the responsibilities and interests of the financial executive.

As corporate financial executives, we are the users of many of the government's statistical services, such as market research, economic analysis, and projections. We are also providers of much of the raw data on which such statistics are based. Thus, we have a direct interest in the quality of the system's outputs and inputs. As taxpayers, we are concerned that government policy decisions be based on accurate and timely data. Inaccurate or untimely data could result in economic losses to the nation.

It is our general position that: (1) the Paperwork Reduction Act is a sound piece of legislation which should not be greatly tampered with; and (2) OIRA has been, and can continue to be, effective in providing necessary central management and coordination in implementing the objectives of the Paperwork Reduction Act.

We believe that Congress had several objectives when enacting the Paperwork Reduction Act. These include: (1) minimizing the federal paperwork burden for individuals, businesses, state and local governments, and other segments of the public; (2) minimizing the cost to the federal government of obtaining information necessary for the proper performance of federal agency functions; and (3) maximizing the usefulness of information collected. These objectives are of great import to our members.

II. BIPARTISAN SUPPORT FOR PAPERWORK REDUCTION

Improvements have been made as a direct result of the current law particularly in the last three years. For example, recognition by the Internal Revenue Service that its burden estimates for tax

forms have historically been understated and its willingness to seek more dialogue with the public on tax administration matters are welcome but long overdue reforms.

The historical combination of bipartisan Congressional support for the Paperwork Reduction Act combined with aggressive enforcement by the Office of Information and Regulatory Affairs provides a "carrot and stick" to agencies wishing to mandate government information requests. Without continued support for the Paperwork Reduction Act with central enforcement in the Office of the President, federal agencies have carte blanche to expand the burden imposed on the private sector. Private sector organizations willing to offer constructive commentary on developing informational requests will have no audience. Few restraints will hold federal agencies back.

To this date, support for reducing burdens on Americans have been bipartisan. After all, it was President Jimmy Carter in 1980 who stated:

> "The Act I'm signing today will not only regulate the regulators, but it will also allow the President, through the Office of Management and Budget, to gain better control over the Federal Government's appetite for information from the public."

III. FEI's RECOMMENDATIONS

We recommend a reauthorization period for the present Paperwork Reduction Act of five years. Congress can still effectively perform its oversight responsibilities through the confirmation of the OIRA Administrator and the funding of OIRA

activities. It is our belief that reauthorization of less than five years is unlikely to yield the results intended by the Act.

Further, the Paperwork Reduction Act is only as effective as the centralized authority created to enforce it. To expect a myriad of federal agencies to neatly and efficiently implement the Act without strong overall management and direction -- as some testimony has implied -- is unreasonable. In truth, there is much duplication in federal data collections, there is much need for transfer of innovative ideas and techniques between and among the agencies, and there must be control over the agencies' insatiable appetite for "MORE" without any attention to cost/benefit factors.

Mr. Chairman, we thank you for the opportunity to present the views of the Financial Executives Institute.

SURVEY OF THE GOVERNMENT PAPERWORK BURDEN ON SMALLER BUSINESS

Prepared by

Price Waterhouse

© 1987

EXECUTIVE SUMMARY

FINDINGS AND RECOMMENDATIONS

Finding: The costs involved in completing government forms--and, perhaps more importantly, the time invested by senior management --are disproportionately heavy for smaller companies (fewer than 100 employees) within the survey than for the larger companies (100 to 500 employees) surveyed.

> Price Waterhouse Recommendation: Government should make every effort to assure that the information requested has relevance, in view of the size of the reporting company.

Finding: Smaller companies do not object to filling out the forms, but they do object to unnecessarily complicated forms, to changing requirements and to duplication of effort.

> Price Waterhouse Recommendation: Make sure that forms and instructions are clear at the beginning; simplify and clarify extant forms and instructions--and stick with them.

Finding: Information gathered is assumed to be helpful to government agencies but is not perceived to be helpful to smaller businesses.

> Price Waterhouse Recommendation: Find better ways to inform smaller companies about what the government does with the information and what benefit they derive from the government's use of this information.

Survey of the Government Paperwork Burden on Smaller Business

The certainty of death and taxes is rivaled only by the demands of government paperwork. The inevitable tension between the government's need for information to enforce regulatory programs and the business community's desire to operate free and clear of regulation is a subject that has attracted executive and legislative attention at the highest levels over the past few years. The cost of providing the government with information must be looked at from two perspectives - that of the individual or organization required to complete the forms and that of the recipient of the information whose responsibility it is to monitor and regulate the private sector.

This nationwide survey of more than 100 of our smaller business clients reveals that the cost of compliance with government requirements poses special problems for small business. Smaller companies (fewer than 100 employees) within this survey spend about as much time and money as the larger companies (100 to 500 employees) surveyed complying with information requirements. Goods producing companies spend more on compliance costs than service oriented companies. No one government agency was singled out for criticism, although one series of forms, those required by the Employment and Retirement Income Security Act (ERISA), drew fire for its burdensome requirements and high compliance cost.

In spite of the survey respondents' near unanimity that they derive little benefit from filling out government reports, most federal agencies (and presumably state and local agencies) would argue that <u>their</u> specific information needs <u>do</u> help the public at large and also, indirectly, the companies themselves. These needs comprise a large number of

congressionally mandated requirements designed to protect the workers, consumers or the public at large. Renewed public support for accurate product labels, SEC disclosures, a safe workplace and environmental protection encourage regulatory agencies to pressure businesses for evidence of compliance. Such pressures are not likely to disappear.

With the passage of the Paperwork Reduction Act of 1980 (PL96-511), Congress attempted to reduce the burden of unnecessary paperwork by giving the Office of Management and Budget (OMB) the power to review and approve all federally sponsored information collection efforts. Moreover, this Act was designed to have agencies review and improve existing paperwork requirements and protect the public against unfair penalties that might stem from an agency's requiring information that failed to receive OMB's approval.

Two of the more important provisions of the 1980 legislation require OMB to set specific objectives for paperwork reduction within a predetermined time and to establish a Federal Information Locator System to help avoid and eliminate duplicative reporting. Although there is some evidence that the small-business community is unaware of the potential benefits of the Paperwork Reduction Act (U.S. Small Business Administration hearings, 1983), the respondents to our survey were eager and willing to air their feelings about such issues as the timing of reports, perceived overlap of the information requested by various agencies, and the level of detail required in reporting on federal procurement activities. Specific comments and suggestions are described in the following, more detailed findings of the survey.

Background

Since 1980, the OMB has sought to reduce the burden of paperwork on the public and, more specifically, small businesses. By the end of 1986, an estimated 600 million hours of annual burden (300,000 work years) were eliminated from the 1980 paperwork base, exceeding by a sizable margin the 25% reduction target set by the Paperwork Reduction Act for the time period 1980-1983 (OMB, Regulatory Program of the U.S. Government, April 1987). This achievement, together with other OMB initiatives, should have resulted in a noticeable reduction in the paperwork burden on the back of the small-business community. We sought to find out from our clients whether this was true.

Survey Procedure

Survey questionnaires were compiled and pretested in October 1986 before being released to the field (see Appendix A for a complete set of survey forms, cover letters, and procedures).

A total of 121 surveys were completed by our clients. In general, the people interviewed were controllers/financial vice-presidents. Of these, 105 were accepted for analysis. Sixteen were rejected because of incomplete information or because the forms used for reference purposes were not part of the standardized set provided with the survey.

Frequency distributions and descriptive statistics were derived from the data. Based on preliminary analyses, four sets of forms were identified for in-depth analyses. Cross-tabs and chi-square statistics were used to assess the significant differences among two demographic variables - number of employees and type of business - and two compliance requirement variables - cost and time expended to prepare a particular form. The demographic variables were reclassified to better portray the

nature of the responding companies. Number of employees per firm was divided into two groups, fewer than 100 and 100 to 500, containing a roughly equal number of firms and a residual number of firms that fell into the category of more than 500 employees. The type of business engaged in by the respondent firms was broken down into two categories which reflect standard definitions for "goods-producing" and "service-providing" companies.

Types of Small Businesses Surveyed

Of the eight types of business categories listed in the survey, most of the respondent firms fell into the category of manufacturing (40.7%); the next largest category was other services (16.4%). Compared to a national distribution of non-farm, non-government employment by type of industry and firm size, our sample was overrepresentative of the manufacturing sector and underrepresentative of service and retail establishments but reasonably representative of the other major categories (see Table 1).

Gross sales ranged broadly, with 47% reporting less than $10 million in annual gross sales to 24% with incomes of over $25 million. As expected, the size of the firms was significantly associated (at the .001 level) with gross sales (see Table 2).

The most frequently cited response to the inquiry about "total person days" required to complete all federal, state and local government forms was more than twenty per year. Goods-producing companies tended to spend more time filling out such forms than service-providing companies (see Table 3), although the difference was not significant. Smaller companies spent about the same number of days overall filling out government forms as did larger firms (see Table 4). Sixty-four percent of firms with more

TABLE 1: COMPARISON OF PRICE WATERHOUSE SURVEY SAMPLE WITH 1984 SMALL BUSINESS ADMINISTRATION DATA BASE BY TYPE AND SIZE OF FIRM (FEWER THAN 500 EMPLOYEES)

Industry National Category Respondents			Price Waterhouse Survey Distribution*	
	%	(n)	%	(n)
Agriculture, Fishing Forestry	1.1	(1)	1.6	(701)
Construction	7.7	(7)	9.0	(4005)
Manufacturing	40.7	(37)	18.4	(8145)
Transportation, Communications, Utilities	5.5	(5)	4.5	(2017)
Wholesale Trade	8.5	(8)	9.8	(4337)
Finance, Insurance, Real Estate	12.1	(11)	7.2	(3189)
Retail Trade	7.7	(7)	22.7	(10,063)
Other Services	16.4	(15)	26.8	(11,918)
TOTALS	100.0	(91)	100.0	(44,375)

* Source: U.S. Small Business Administration Data Base, USELM file version 6, unpublished, January 1987.

TABLE 2: ANNUAL SALES
VS SIZE OF COMPANY (% DISTRIBUTION)

Annual Sales ($ million)	Number of Employees 1 - 99	100 - 500	more than 500
1 - 10	82.2	19.6	0.0
10 - 25	13.3	43.5	0.0
more than 25	4.4	37.0	100.0
TOTALS	100.0	100.0	100.0
(n)	(45)	(46)	(3)

TABLE 3: TIME REQUIRED TO COMPLETE ALL FORMS
VS TYPE OF COMPANY (% DISTRIBUTION)

Number of Days Annually	Type of Company Goods Producing	Service Providing
1 - 5	18.8	25.5
6 - 20	18.8	29.8
more than 20	62.4	44.7
TOTALS	100.0	100.0
(n)	(48)	(47)

Note: Differences in totals are due to incomplete responses.

TABLE 4: TIME REQUIRED TO COMPLETE ALL FORMS
VS SIZE OF COMPANY (% DISTRIBUTION)

Number of Days Annually	Number of Employees 1 - 99	100 - 500	more than 500
1 - 5	30.0	13.3	25.0
6 - 20	12.5	35.6	25.0
more than 20	57.5	57.5	50.0
TOTALS	100.0	100.0	100.0
(n)	(40)	(45)	(4)

TABLE 5: TIME REQUIRED TO COMPLETE ALL FORMS
VS ANNUAL SALES (% DISTRIBUTION)

Number of Days Annually	Annual Sales ($ million) 1 - 10	10 - 25	more than 25
1 - 5	31.0	22.3	4.5
6 - 20	16.3	33.3	31.8
more than 20	52.4	44.4	63.7
TOTALS	100.0	100.0	100.0
(n)	(42)	(27)	(22)

than $25 million in annual sales reported that they spent more than twenty days a year completing government forms while only 49% of firms earning less than $25 million a year did so (see Table 5).

Question 7 of the survey reports the distribution of responses to each of the eighteen government regulated areas listed in the survey. The three areas in which most of the respondents answered, "Yes, my business is affected," are employee safety/health (72.1%), pensions (62.7%), and equal opportunity (76.9%). The number of surveys that were completed using each of the forms in the package was computed, and the most commonly used forms were identified for further analysis.

A forth set of forms - the Price of Goods/Services - was also used frequently. This fact is a bit misleading, however. Some of the respondent firms used forms not included in the standardized package to complete the surveys. Through a detailed analysis of these "non-standard" forms, many were found to have roughly the same compliance requirements as those of the standard forms. By far, the largest number of these were statistical in nature, similar to those of the Bureau of the Census Quarterly Financial Report (a.k.a. Price of Goods/Services). This explains the discrepancy between the lack of "yes" responses to this category under the regulated areas section of the survey and the high usage rate of the form.

Once identified as being the most commonly utilized forms, these four forms were isolated and analyzed, with the following results:

Price of Goods/Services (Bureau of the Census Quarterly Financial Report)

A variety of forms of this type were used by forty-two of the one hundred-five respondents as the basis for their response to survey questions nine through fifteen. The form is most frequently prepared by

company employees (76.2%); outside contractors and both company employees and outside contractors prepare the form much less frequently (11.9%). When outside contractors are used, the mean cost is $3,809 annually. The mean time invested by company employees in gathering the data and preparing the form is 35.1 hours annually at a cost of $23.67 per hour, for a total annual estimated cost of $831.

Thirty-six of the forty-two respondent companies provided comments on the problems encountered and changes desired for the Price of Goods/Services form. Fifty-three percent of these firms said they had no problems with the form and suggested that no changes be made to it. The most frequently cited problem was how much time record-keeping and data-preparation consume. A primary reason seems to be that the format for the required data is not similar to the way in which the companies record or maintain the data. In other words, the required data are not readily taken from existing financial statements.

Another formatting problem relates to the difference between the calendar-year data required for compliance and the fiscal-year statistics kept by the companies. It is not surprising, therefore, that the desired change most frequently cited was to bring the format into conformity with the company's financial statement. Companies suggested they be allowed to report at the end of the fiscal-year rather than the end of the calendar-year. Another suggestion was to simplify the questions and/or to reduce the number of questions. Thirteen percent of the respondent companies felt that the record keeping necessitated by this form helps in the conduct of their business, though there was no indication how it helps.

Employee Safety/Health (OSHA Hazard Communication Standard)

Any forms that pertained to OSHA's Hazard Communication standard were grouped under this category; thirty-four of the respondent firms used these forms to complete the surveys. Again, this form is most often prepared by company employees (78.8%); outside contractors prepare the form for 12.1% of the firms and both company employees and outside contractors prepare the form for 9.1% of the firms. When outside contractors are used, the mean cost is $9,368 annually. The mean time to complete this form by company employees is 80.31 hours per year, at a cost of $25.77 per hour, resulting in an estimated annual cost of completion of $2070.

Thirty-one respondent firms supplied comments on problems and changes to the Employee Safety/Health form. Fifty-eight percent of these reported no problems. The most frequently cited problem was the time-consuming and difficult nature of the record-keeping and data-reporting requirements. Other problems cited concern the form's complexity and confusing applicability standards, the testing materials required, the need for expert assistance from a chemical engineer in order to comply with the regulations, and the disruption caused by constantly changing standards.

None of the respondent companies wanted to eliminate the form, though several would like to see it simplified. The most practical change suggested was to require the report on an annual basis. Seventeen percent of the companies felt that the data help in the conduct of their business, mostly by identifying potential hazards and creating a record of injuries.

Return/Report of Employee Benefit Plan (ERISA)

Hereafter referred to as the Pensions form, this category comprises forms in the 5500 series. Fifty of the respondent firms used these forms to complete the surveys. This form is most frequently prepared by company employees (61.9%). Outside contractors prepare the form for 20.6% of the respondent firms, and both company employees and outside contractors prepare the form for 17.5% of the respondent firms. When outside contractors are used, the mean cost is $2,631 per year. The mean time to complete the form by company employees is 140.0 hours annually. The average cost to complete this form is $26.25 per hour, resulting in an estimated annual cost to the firm of $3,675.

Forty-seven respondent companies provided comments concerning problems and changes to the Pensions form. Fifty-seven percent of these reported they experienced problems with the form. The most frequently cited problems concerned data collection. Collecting data from multiple sources was deemed costly and time-consuming. The other prominent complaint concerned the form itself. It was cited as being worded too technically, containing confusing definitions, and not being applicable to the particulars of certain plans.

The changes most frequently suggested were to simplify and clarify the instructions, terminology and applicability standards (i.e., to what companies do the standards apply). Other suggestions included the elimination of the requirements for auditing; the exemption of medical and group life benefit plans (since there are no employee monies held in trust); and condensing the form to one page with the additional enclosure of audited financial statements.

23-709 - 89 - 7

Seventeen percent of those firms completing surveys for this form felt that it helps them conduct business. The primary benefit derived is to encourage accurate and detailed record keeping, a requirement fundamental to administering pension plans.

Equal Opportunity (EEOC Employer Information Report)

Fifty of the one hundred-five respondent firms used it to provide survey data. Again, the form is most commonly prepared by company employees (80%). Outside contractors prepare the form for only 9% of the respondent firms; 12% of the respondents have the form prepared by both company employees and outside contractors. When the form is prepared outside, the average cost is $4,361 per year. The mean time to complete the form by company employees is 50.34 hours each year. The mean cost to complete the form is $33.46 per hour or $1,684 per year.

Forty-six respondent firms commented on problems encountered and changes desired for the Equal Opportunity form. Sixty-three percent of these firms identified problems in conjunction with record-keeping or form preparation. The two major problems cited were the unclear definitions of job categories (which make it difficult to classify certain employees) and the difficulty of determining the exact national origin of some individuals. Other problems concern the time-consuming nature of data collection due to multiple business locations, the voluminous data requirements and the high turnover rate for some jobs that makes accurate filing difficult.

By far the most frequently suggested changes to the form were to clarify job-category definitions and to simplify the form. Other frequently cited changes were to reduce the reporting frequency and to raise the employee limit for applicability requirements.

Twenty-one percent of the companies felt that this form helps in the conduct of business by encouraging careful record keeping, thus identifying weak areas of compliance.

Other Forms

The remaining forms in the standardized set were scanned to determine if there were common problems with the regulations, record-keeping or form preparation.

The forms pertaining to environmental protection provoked a variety of comments. In general, the regulatory reporting requirements were cited as being too detailed and apt to change. They necessitate very time-consuming and burdensome data collection. The forms themselves were cited as being very long, containing overly technical language, and having inadequately explicit instructions. Some argued for elimination of the forms altogether. Others suggested simplifying and clarifying the instructions, which would reduce the time needed for compliance.

The Technical Data Required Under Contract form (a.k.a. Federal Procurement) was also cited as presenting problems to companies doing business with the federal government. One problem reported was the time and cost for collecting the requisite data. In particular, the requirement to complete the forms each time a sale is made was considered wasteful. The required quantity and detail of the data also seemed to present problems. This is exacerbated by insufficient room on the form to provide the required data. The wording of the forms was cited as a serious problem, particularly in Section III. Suggestions for change included simplifying and clarifying the form, requiring less minute details, and updating the specifications to meet industry standards.

The International Trade Administration Application for Export License (a.k.a. Import/Export Regulations) was identified as causing problems to companies in this field. The major complaints were concerned with the time involved in data collection and the complexity of the reporting procedures. The requirements for when to submit the applications were said to be confusing. Another complaint was the lack of a published list of restricted countries. Suggested changes with respect to these problems included publishing general guidelines for export filing requirements, and publishing and circulating a list of restricted countries.

Conclusions

The implications of the survey results survey are several. Because smaller spent about as much time and money as larger firms in complying with government reporting requirements, the burden was heavier on the smaller companies. The paperwork burden has more to do with the complexity and definitional problems associated with interpreting the required forms than with the necessity of filling out the forms. From the perspective of the smaller business executive, the frustrations associated with compliance reflect not so much the requirement that needed information be provided, but that the formats are unclear or are changed frequently. Such problems add to the high cost of doing business in the U.S. Remedial measures should be carefully tied to the timing and the definition of the data requirements associated with specific forms. Furthermore, with regard to the four categories of forms subjected to a more detailed analysis, Charts 1 and 2 demonstrate that the Pensions (or ERISA) form far outweighs the other three forms in cost and time to complete and is not perceived to be helpful to the conduct of the business. It is clearly a candidate for further study and modification.

Reducing the paperwork burden is of necessity a complex and detailed undertaking. We believe this survey provides useful information to government agencies seeking to alleviate unnecessary paperwork.

Chart 1: Cost Per Year To Complete Forms

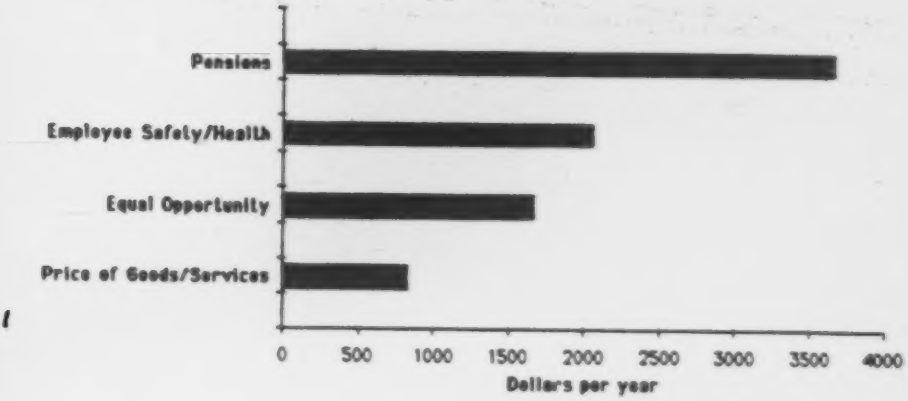
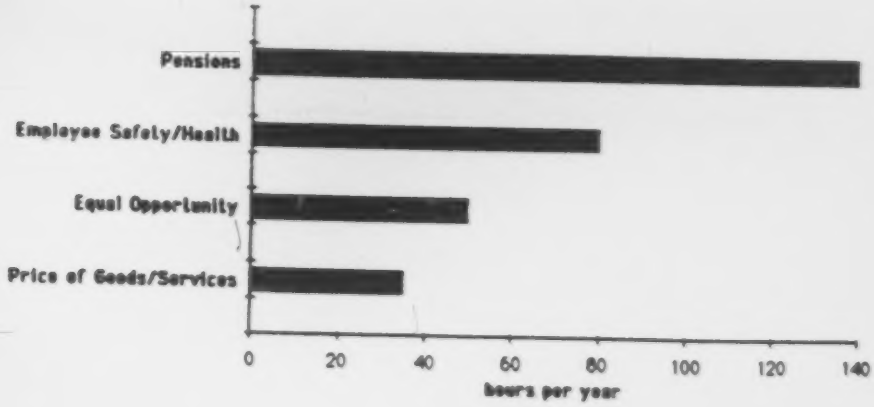


Chart 2: Average Time To Complete Forms



APPENDIX A

To: All CPS Partners

From Location: Donald Rappaport

Date: December 9, 1986

Re: Paperwork Reduction Survey of Smaller Businesses

At the recent White House Conference on Small Business, delegates agreed that the paperwork burden imposed on them by the government is a problem that hasn't gone away. As active participants in the Conference, We volunteered to do something to help correct the situation. PW received the encouragement of the Office of Management and Budget (OMB), which, incidentally, has been charged with the responsibility of administering the Paperwork Reduction Act of 1980. We agreed that Price Waterhouse would undertake a survey of its small-business clients (employing 500 or fewer) in an attempt to measure the cost of complying with government-generated forms and reports. To this purpose I am soliciting your help.

Carrying out the survey requires three steps:

Step 1. Identify eight small businesses in your district that you think would be willing to participate in the survey. Try to select a cross section of firms as listed in #4 of the attached survey form.

Step 2. Telephone your contact in each company (preferably the CEO); explain the survey's purpose as described in the attached interview guide; explain that the questionnaire takes about an hour to complete, and then set up a time for a PW representative to meet with the appropriate company employees responsible for filling out government forms and reports.

Step 3. At the outset of the meeting, the people contacted should fill out the first two pages of the survey. Note which of the regulatory areas listed in #7 he/she has checked. Select three forms (from the kit to be provided to you), one from each of three areas checked "yes" on #7, and have the respondent keep those forms in mind as he/she fills out the remaining survey questions. Try to select a cross section of forms from the kit so that we eventually will be able to get reactions to all the documents in the kit.

If you wish, leave the survey and copies of the forms with the client. (Have respondent make copies of the three forms chosen for comment.) Please have completed surveys returned to me by February 6, 1987. Thank you for your help.

PRICE WATERHOUSE PAPERWORK REDUCTION SURVEY

Interview Guide

Interviewer: _____

Office: _____

Name of Company Interviewed: _____

Enclosures: Interview guide (8), Survey form (8), Kit of govt. forms (1)

Suggested Introduction:

"Price Waterhouse is conducting a study of the paperwork burdens imposed by the government on smaller businesses in the U.S. The recent White House Conference on Small Business identified the cost and burden of complying with federal and state reporting requirements as two of the major barriers to the success of small businesses. Our study is designed to help resolve that problem.

"The results of this study will be used to advise the Office of Management and Budget (OMB), Congress and other federal agencies on ways to decrease the paperwork burden. Because we plan to combine your response with those of other firms, no individual response or company will be identified. We do want, however, to dramatize your specific complaints in order to show the government which forms or reporting requirements need to be changed. OMB has said it will reduce the paperwork burden if we can identify and document unnecessary burdens.

"To help focus our discussion, I would like to give you a packet of three forms or reporting requirements that your business is currently required to complete. (Please note that we will not be asking you about tax report forms.) I have a few simple questions to ask you about each of these forms. But first I would like you to fill out a few questions about your business. While we will not identify any individual respondent in the final report of the survey, we are interested in knowing which category your business falls into and the size of your firm."

Note to PW representative:

When you have completed the interview, please staple this sheet to the survey form and have it returned in the attached self-addressed envelope to:

Donald Rappaport
Price Waterhouse
1801 K Street, NW
Washington, D.C. 20006

CROSS-INDEX OF BUSINESS CATEGORIES AND GOVERNMENT FORMS/REGULATIONS

Agriculture/Fishing/Forestry:

- c. Water Pollution
- d. Hazardous Materials
- e. Noise Pollution
- p. Employee Health/Safety
- q. Pensions
- r. Equal Opportunity

Transportation/Communications/Utilities:

- a. Air Pollution
- e. Noise Pollution
- n. Transportation
- o. Energy Use/Rates
- p. Employee Health/Safety
- q. Pensions
- r. Equal Opportunity

Financial/Real Estate/Insurance:

- f. Business Finance
- g. Consumer Credit
- m. Truth in Lending
- p. Employee Health/Safety
- q. Pensions
- r. Equal Opportunity

Construction:

- b. Waste Disposal
- c. Water Pollution
- d. Hazardous Materials
- e. Noise Pollution
- p. Employee Health/Safety
- q. Pensions
- r. Equal Opportunity

Wholesale:

- f. Business Finance
- i. Price of Goods/Services
- k. Import/Export Regulations
- n. Transportation
- o. Energy Use/Rates
- q. Pensions
- r. Equal Opportunity

Manufacturing:

- a. Air Pollution
- b. Water Disposal
- c. Water Pollution
- d. Hazardous Materials
- e. Noise Pollution
- f. Business Finance
- h. Federal Procurement
- j. Consumer Safety/Health
- k. Import/Export Regulations
- l. Product Safety
- n. Transportation
- p. Employee Safety/Health
- q. Pensions
- r. Equal Opportunity

Retail/Restaurants:

- a. Air Pollution
- f. Business Finance
- g. Consumer Credit
- i. Price of Goods/Services
- o. Energy Use/Rates
- p. Employee Safety/Health
- q. Pensions
- r. Equal Opportunity

PRICE WATERHOUSE PAPERWORK REDUCTION SURVEY

Profile of Participating Companies

1. Name of Firm: _____

2. Address: _____

   City: _____ State: _____ Zip: _____

3. Title of Person(s) Interviewed: _____

   _____ Phone: _____

4. Business Category: (Please check one) *

1.0	Agriculture/ Fishing/Forestry	4.8	Transportation/ Communications/Utilities	10.6	Financial/ Real Estate/ Insurance
6.7	Construction	9.6	Wholesale	14.4	Other Services
42.3	Manufacturing	10.6	Retail/Restaurants		

5. Average Number of Employees (including owner): _____

6. Annual Gross Income (or Gross Sales): (Please check one) *

5.0	Less than $1 million	11.9	Between $25 & $50 million
21.8	Between $1 & $5 million	8.9	Between $50 & $100 million
20.8	Between $5 & $10 million	2.0	More than $100 million
28.7	Between $10 & $25 million	1.0	Uncertain

7. A number of areas are regulated by various government agencies. Twenty such areas are listed below. Please indicate which government requirements affect your business: (Please check a response for each item) *

Environment	YES	NO	UNCERTAIN
a. Air Pollution	21.2	73.7	5.1
b. Waste Disposal	35.4	60.6	4.0
c. Water Pollution	22.2	71.7	6.1
d. Hazardous Materials	39.0	57.0	4.0
e. Noise Pollution	21.2	71.7	7.1

* All responses are percentages

Finance	YES	NO	UNCERTAIN
f. Business Finance	44.0	53.0	3.0
g. Consumer Credit	14.4	81.4	4.1
h. Federal Procurement	30.7	68.3	1.0
Goods & Services	**YES**	**NO**	**UNCERTAIN**
i. Price of Goods/Services	32.0	60.0	8.0
j. Consumer Safety/Health	29.0	69.0	2.0
k. Import/Export Regulations	35.3	60.8	3.9
l. Product Safety	32.0	65.0	3.0
m. Truth in Lending	13.0	82.0	5.0
n. Transportation	26.0	70.0	4.0
o. Energy Use/Rates	11.1	84.8	4.0
Employee Relations	**YES**	**NO**	**UNCERTAIN**
p. Employee Safety/Health	72.1	18.3	9.6
q. Pensions	62.7	36.3	1.0
r. Equal Opportunity	76.9	21.2	1.9
Other Areas			
s. _____			

The questions that follow pertain to the three forms or information requests you have received from the PW representative. Please look over each form and answer the survey questions that follow. Your answers will enable us to estimate the time and cost involved in completing them.

8. Please write in the identifier numbers and titles of the three forms given to you for review. If one or more of these forms are similar to but not exactly the same as another form which your firm fills out, please give us the name or title of that form and respond to the following questions with it/them in mind. The questions that follow will simply refer to Forms or Information Requirements A, B, and C.

Form A. Title: _____
Identifier #: _____

Form B. Title: _____
Identifier #: _____

Form C. Title: _____
Identifier #: _____

9. Who prepares these forms for your company? (Check all that apply)

	Company Employees	Outside Contractor	Both
Form A	[]	[]	[]
Form B	[]	[]	[]
Form C	[]	[]	[]

If an outside contractor prepares one or more of the three forms, how much does it cost? Please estimate cost on an annual basis.

Form A $ ____ Form B $ ____ Form C $ ____

10. What particular problems (if any) have you had in collecting the data for and then filling out these forms? (Be as specific as possible. Use back of page if more space is needed)

Form A: _____

Form B: _____

Form C: _____

11. If you have had problems, how would you change or improve the form to make it more reasonable?

Form A: _____

Form B: _____

_____

_____

_____

Form C: _____

_____

_____

_____

12. Does collecting the data or keeping records needed to fill out these forms help your firm in conducting its business? (Check one for each form)

	YES	NO	UNCERTAIN
Form A	[]	[]	[]
Form B	[]	[]	[]
Form C	[]	[]	[]

If "yes", how does it help? (Please write in)

Form A: _____

_____

_____

_____

Form B: _____

_____

_____

_____

Form C: _____

_____

_____

_____

13. Please estimate the time your firm invests in gathering the data needed and in actually completing these forms. Please report estimated number of hours on an annual basis.

	Form A	Form B	Form C
Zero	[]	[]	[]
1 to 5 hours	[]	[]	[]
5 to 10 hours	[]	[]	[]
10 to 15 hours	[]	[]	[]
15 to 20 hours	[]	[]	[]

	Form A	Form B	Form C
20 to 30 hours	[]	[]	[]
30 to 40 hours	[]	[]	[]
more than 40 hours	[]	[]	[]
uncertain	[]	[]	[]

If more than 40 hours are needed on any of the forms, please estimate the total number of hours needed on an annual basis.

Form A _____ Form B _____ Form C _____

14. Based on an hourly rate, approximately how much do you estimate it costs to prepare these forms? Please include all costs based on salaries of personnel involved in compiling the data, filling out the form or maintaining needed records weighted by all the relevant factors, e.g., employee benefits, supervisor's time, ADP processing, storage costs and other overhead.

	Form A	Form B	Form C
less than $5/hour	[]	[]	[]
between $5 & $7.50/hour	[]	[]	[]
between $7.50 & $10/hour	[]	[]	[]
between $10 & $15/hour	[]	[]	[]
between $15 & $20/hour	[]	[]	[]
between $20 & $30/hour	[]	[]	[]
between $30 & $40/hour	[]	[]	[]
more than $40/hour	[]	[]	[]
uncertain	[]	[]	[]

If more than $40/hour are needed on any of the three forms, please estimate the total number of dollars per hour it costs your firm on an annual basis.

Form A $ _____ Form B $ _____ Form C $ _____

15. If you were to lump together all of the forms and reports your firm completes for federal, state, and local government agencies (excluding taxes), what number of person-days would you estimate are involved?

1 to 2 days	4.9
3 to 5 days	15.7
6 to 10 days	9.8
11 to 20 days	13.7
more than 20 days	50.0
uncertain	5.9

16. Are there any other forms or areas of government regulations (other than federal, state, or local taxes) that impose substantial reporting or record keeping burdens on your firm?

Yes	42.9
No	57.1

If yes, please name the area and the particular reporting or record keeping burden involved, and state why it is a burden.

_____

_____

_____

_____

Thank you for your help.

U.S. Chamber of Commerce

1615 H Street, N.W.
Washington, D.C. 20062
463-5515

Legal and Regulatory
Affairs Department

August 28, 1989

The Honorable Alan Dixon
Chairman
Subcommittee on Government Contracting
and Paperwork Reduction
Committee on Small Business
U.S. Senate
428A Senate Russell Office Building
Washington, D.C. 20510-6350

Dear Mr. Chairman:

The U.S. Chamber of Commerce appreciates your efforts to ensure that the effects of paperwork on small business are examined during the upcoming reauthorization of the Paperwork Reduction Act. The Chamber strongly supports the reauthorization and encourages a strengthening of its provisions to secure for small business the protections envisioned by the Act's authors.

In particular, the Chamber supports legislation that offers the following positive features.

- Adequate funding for the Office of Information and Regulatory Affairs (OIRA).
- More business participation in the paperwork review process and assessments of burden hours to comply with government information collections.
- Setting goals to reduce the overall burden of paperwork requirements.
- Systematic and regular Congressional oversight of both OIRA and agency actions pursuant to the Act.
- Consistent reporting to Congress by the General Accounting Office on both OIRA and agency actions pursuant to the Act.
- Requirements that agencies provide information to Congress on the paperwork impacts of proposed and existing regulations on business in a timely and more accurate manner.

* A usable centralized Federal Information Locator System that agencies would be required to use before issuing new paperwork requests, in order to ensure that the data sought are not already being collected within the government.

* Closer working relationships among OIRA and two other offices managed by the Office of Management and Budget -- the Office of Federal Procurement Policy and the Federal Acquisition Regulatory Council.

The Chamber requests that its July 27, 1989, testimony before the House Committee on Government Operations be included in the hearing record. The Chamber's witnesses were Dr. Earl Hess and Ms. Carol Miller, President and Vice President respectively, of Lancaster Laboratories, a small business based in Lancaster, Pennsylvania. Dr. Hess and Ms. Miller provided specific examples of how federal paperwork burdens affect a small business in areas such as procurement policy, Section 89, affirmative action, taxation and environment.

Thank you again for your support on this important issue.

Sincerely,

Albert D. Bourland

Enclosure

cc: Subcommittee Members
William B. Montalto
Procurement Policy Counsel
Senate Committee on Small Business

Individual letter sent to Senator Grassley

Statement of the U.S. Chamber of Commerce

ON: REAUTHORIZATION OF THE PAPERWORK REDUCTION ACT

TO: SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

BY: CAROL MILLER AND DR. EARL H. HESS

DATE: JULY 27, 1989

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest federation of business companies and associations and is the principal spokesman for the American business community. It represents nearly 180,000 businesses and organizations, such as local/state chambers of commerce and trade/professional associations.

More than 93 percent of the Chamber's members are small business firms with fewer than 100 employees, 45 percent with fewer than 10 employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business--manufacturing, retailing, services, construction, wholesaling, and finance--numbers more than 10,000 members. Yet no one group constitutes as much as 32 percent of the total membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the 59 American Chambers of Commerce Abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of its members serving on committees, subcommittees and task forces. Currently, some 1,800 business people participate in this process.

STATEMENT
on
REAUTHORIZATION OF THE PAPERWORK REDUCTION ACT
before the
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
of the
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
for the
U.S. CHAMBER OF COMMERCE
by
Carol Miller
and
Dr. Earl H. Hess
July 27, 1989

Mr. Chairman and members of the Subcommittee, I am Carol Miller, Vice President and Director of Human Resources for Lancaster Laboratories, Inc. located in Lancaster, Pennsylvania. My company is an independent laboratory providing chemical and biological services to a wide range of clients in the food, environmental, and pharmaceutical areas. I am here today testifying on behalf of the U.S. Chamber of Commerce, the world's largest federation of businesses, chambers of commerce, and trade and professional associations. Accompanying me is Dr. Earl H. Hess, the President and founder of Lancaster Laboratories, Inc. He is a member of the Board of Directors of the U.S. Chamber of Commerce, Chairman of the Legislative Policy Committee of its Small Business Council, and Chairman of its Committee on Environment. The Chamber is pleased to present its views on this most critical issue.

The Chamber supported the Paperwork Reduction Act (PRA) when it first was passed in 1980 and supported reauthorization in 1986. We strongly recommend the reauthorization of the PRA this year. The Chamber also supports this Subcommittee's efforts to eliminate excessive and duplicative paperwork burdens.

Congress passed the PRA in December 1980, extensively amending the 1942 Federal Reports Act in a major effort to reduce federal paperwork burdens by focusing oversight of agencies' paperwork requirements in one place, the Office of Management and Budget (OMB). The PRA created the Office of Information and Regulatory Affairs (OIRA) within OMB to implement the Act. The Director of OMB is empowered to review all federal agency paperwork burdens and assign an OMB "control number" to each approved requirement.

The new law set specific paperwork reduction percentages and established a mechanism to allow for greater public participation in the process of making information collection or paperwork policy. Under the "Public Protection" provision of the PRA, no one can be punished for failure to comply with an "information collection request subject to the Act" that has not been approved by OMB and assigned a control number. OMB also was required to implement a Federal Information Locator System (FILS) within one year to provide a complete inventory of all information requirements and, therefore, eliminate all duplicative requirements.

The preamble to the PRA specifically identifies small business as one of the principal beneficiaries of the Act, which was adopted by the same Congress that enacted the Regulatory Flexibility Act (RFA) of 1980 only two months earlier. Congress believed that these two laws, in conjunction with a third law passed the same year -- the Equal Access to Justice Act -- would provide an integrated approach to providing broad regulatory relief for the nation's small businesses.

Executive Order 12291, promulgated in January 1981, established deregulation as a top Reagan Administration priority, making "cost/benefit" analyses material to regulatory reviews and imposing the responsibility for reviews on the OIRA. Consequently, OIRA published in 1983 its first regulation under the PRA. While far-reaching, this implementing regulation did not eliminate all the small business paperwork burdens originally anticipated.

Cost/benefit analyses of regulatory requirements are permitted by a number of statutes imposing regulatory burdens on the public and are encouraged by Executive Order 12291. However, this approach usually has not been applied to paperwork requirements. Many small businesses believe that the burden of paperwork compliance bears no real relationship to the perceived public benefit. Thus, before paperwork burdens are imposed, agencies should be required to determine the complete cost of these requirements on small business and to weigh the burdens against the expected benefit. If the burden outweighs the benefit, the information collection should not be permitted.

During 1988, OMB estimated that 1.8 billion hours of public time were spent in satisfying the demands of federal agencies for information. However, an independent study commissioned by the Internal Revenue Service (IRS) indicates that the public actually spent well over 5 billion hours on IRS forms alone. Of the total burden, more than 50 percent was imposed on businesses. While efforts to reduce the overall burden have been partially successful, business's share of the burden has increased significantly over the past few years.

The federal government regulates many aspects of business. For example, there is price regulation for transportation, dairy production, and long distance telephone service, as well as the setting of safety standards in the workplace and for hazardous waste disposal. These industries often are regulated by state or local governments as well.

According to the Small Business Administration, in 1988 the cost of economic regulation was estimated to be $50 billion, and the cost of federal paperwork was approximately $100 billion. These burdens do not fall equally on all businesses: the proportionate cost of regulatory compliance for small firms is almost three times that for large firms.

Many companies have been forced to hire employees solely for the purpose of complying with federal paperwork and recordkeeping requirements; these additional employees add significantly to the costs of goods and services. Parenthetically, the result often is higher, less competitively priced U.S.-produced products.

To further address this critical problem, Congress also enacted the RFA to ensure that federal regulations do not unnecessarily or disproportionately burden small businesses. The law explicitly recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a federal regulation.

The RFA mandates that the federal government review all regulations on which public comment is required by the Administrative Procedure Act, section

553(b), or any other law to determine whether maximum flexibility is being provided to accommodate the unique needs of small businesses. An "initial regulatory flexibility analysis" is required to identify: (1) the reasons that the agency is considering action; (2) the objectives and legal bases for the proposed rule; (3) the kind and number of small entities to which the proposed rule will apply; (4) the projected reporting, recordkeeping, and other compliance requirements of the proposed rule; and (5) all federal rules that may duplicate or conflict with the proposed rule.

If the promulgating agency certifies that the rule does not exert a "significant full impact on a substantial number of small entities," a full regulatory flexibility analysis is not required. However, the agency still must perform some regulatory analysis to make such a determination.

For all final rules, the RFA requires agencies to publish a "final regulatory flexibility analysis" to: (1) summarize the issues raised by the public comments; (2) summarize the agency's assessment of those comments; (3) state any changes made in the proposed rule as a result of those comments; (4) describe each significant alternative to the rule consistent with the regulatory objectives; and (5) state the reason that each alternative was rejected.

There is no separate judicial review for agency certifications or regulatory flexibility analyses. Intermediate review of any regulatory flexibility action is prohibited. However, it was the explicit intent of Congress that courts may review final regulations and that if an agency failed to perform a regulatory flexibility analysis or did an incomplete analysis, the court might then find that the rule was arbitrary and capricious. While the option of judicial review exists, this process is always time-consuming and very costly.

To illustrate the magnitude of the problem that small businesses face in complying with paperwork and regulatory requests, I will highlight several specific areas that impose unnecessary burdens on my company. These examples demonstrate the cumulative effect of regulatory and paperwork burdens on different functions of the same business.

Section 89

As standard practice, our company carefully monitors new legislation and resulting requirements. Lancaster Laboratories learned that Section 89, which requires employers to conduct a complicated series of tests to prove that their health and other benefits plans do not discriminate in favor of highly compensated employees, was to be implemented on January 1, 1989. We viewed this seriously and took all necessary steps to be in full compliance. Our company incurred significant internal and external expenses in order to have our documents in compliance by that date. Now that we have incurred the cost, it appears that Congress recognizes how extreme Section 89 regulations are and that they should be changed. Nevertheless, to comply with this change will cost us additional dollars.

While Section 89 is extremely complicated to apply to a single business, Lancaster Laboratories also is engaged in one joint venture and is in the process of establishing another. These joint ventures fall under the "affiliated services" group requirements. The equivalency tests are so complicated to conduct that our company must have one benefit practices system for all three. This is senseless because living situations differ in Lancaster, Salt Lake City, and Houston where the ventures are located. Burdens include having our Pennsylvania-based insurance company extend services to each site because local insurance companies do not offer similar packages.

The Employee Retirement Income Security Act of 1974 (ERISA) also incorporated some of the same affiliated service group rules. Lancaster Laboratories worked for years to develop the financial stability to introduce a 401(k) plan with liberal benefits and profit-sharing. Now we are required to offer the same benefits to employees of our start-up companies, which have yet to make a profit. This has an adverse effect on employee morale.

Documenting that employees know all the benefits falling under Section 89 and ERISA added 43 pages to our Personnel Manual this year.

In the PRA clearance filing with OMB, the IRS estimated an average of 10 to 12 hours per company to comply with Section 89. This estimate does not cover even the minimum number of hours required by the very smallest employer. In addition to this unrealistic time estimate for comprehending the law, gathering data, and conducting tests, there are time burdens for collecting sworn statements from employees who have other medical coverage and for collecting information on former employees.

The complexity of the tests imposed by Section 89 and the 44 Federal Register pages of regulations that go with it is out of proportion to the legislation's stated goals. Other Chamber members have told us that Section 89 is the most "time-consuming, paper-producing nightmare" that they have ever seen. As one member wrote, "When you add Section 89 to the requirements of the Immigration Reform Act, Consolidated Omnibus Budget Reconciliation Act, health and safety regulations, affirmative action plans, etc., believe me, I am developing a mountain of paper."

Affirmative Action

As an employer with more than 50 employees and a government contract of more than $50,000, Lancaster Laboratories is subject to an Affirmative Action Audit under the Office of Federal Contract Compliance Program. In 1988 we expended approximately 600 hours of staff time, at a cost of more than $8,500, preparing and facilitating this process. Incidentally, the final paperwork package weighed 13 pounds.

Our experience with this process was extremely negative. We pride ourselves on applying the spirit as well as the letter of the law in our equal opportunity efforts and have worked with social service agencies in our area to recruit and train minority and disadvantaged workers. The government auditor was not at all interested in good faith efforts but extremely interested in "nit-picking." For example, we followed the department's written regulations and typed a list of employees beginning with the lowest paid and moving to the highest paid. Our auditor preferred the reverse order (listing highest paid first), which necessitated staff's working overtime.

In another example, Lancaster Laboratories was asked to determine the availability of minorities within areas in which we recruit to match those percentages in our work force. Obtaining that information is all but impossible, as our contacts with 41 recruiting sources, including vocational-technical schools, business schools, and science departments in colleges, demonstrated.

It is to the advantage of small business and the federal government to create contractual relations between the two. Unfortunately, the complexity of paperwork is often overwhelming. In our small business, we are forced to have one full-time staff contract specialist simply to work with legal aspects of this complexity.

Procurement

Two specific examples where businesses incur extraordinary paperwork burdens in the federal procurement process are regulations involving technical data rights and procurement integrity. While there are numerous other possible examples, these two are characteristic.

Technical Data Rights

The Department of Defense (DOD) interim rule on "Patents, Data, and Copyrights" has been revised several times over the past few years. Although this rule does not affect Lancaster Laboratories directly, I will describe briefly a portion of the history of this rule.

DOD requested clearance of its April 1, 1988 version of the rule but was advised by OIRA that pursuant to the PRA, any information collection requirements contained in the interim rule that went beyond those already approved for collection under OMB control number 0704-0240 could not be put into effect absent OMB approval. On October 17, 1988, DOD submitted to OMB a request to (1) withdraw its April 1, 1988 information collection submission and (2) obtain an emergency clearance for the information collection requirements contained in a new version of the interim regulation.

OMB subsequently advised DOD that because there was no clearance on its April 1988 version of the interim rule, none of its requirements could be put into effect. It should be noted, however, that according to a number of Chamber members, this version of the interim rule still appears in contracts awarded between April 1, 1988 and publication of the next version in October 1988.

On October 21, 1988, OMB published in the Federal Register notice of a public information collection for the latest version of the rule. On October 28, the next version of the interim rule was published for public comments. DOD's request for emergency clearance for information collection requirements contained in the October 28, 1988 version of the interim rule was granted. This clearance, however, did not reflect OMB's review of this information collection beyond recognition of the need to accommodate an emergency.

While the Chamber viewed the revised rule as an improvement over the seriously flawed interim rule issued April 1, 1988, the revision in no way lessened the extensive paperwork burden that compliance will entail. The Chamber is concerned that the additional time and expense necessary to comply with the rule, both for the government and industry, will not be cost-effective and will require resources far beyond any demonstrated need or utility to the government. The rule also fails to implement the President's objective of promoting commercialization of government-funded technologies; the failure reflects a reluctance to recognize the contribution of private funds to the development of technology and the economic and public benefit derived.

The rule creates an immense paperwork burden for all parties. Specifically, the DOD justification submitted to OMB for paperwork clearance estimates 16,560 responses annually for reporting/disclosures at 79.47 hours per response and 4,130 recordkeepers providing an estimated 240 hours each annually. This will cost the public approximately $34.6 million for reporting alone. This sharply contrasts with industry estimates of $90 million to $342 million. It is also industry's assessment that the recordkeeping

burden is at least twice DOD's estimate. The Chamber would be pleased to provide specific examples to the Subcommittee upon request.

The Chamber urges OIRA to instruct DOD to revise the regulation to (1) comply with Congressional direction to balance the government's and contractor's interests; (2) incorporate the policy guidance in the President's Executive Order 12291; and (3) reduce the paperwork burden on the public. This revision can largely be accomplished by directing DOD to adopt the suggestions made by the Office of Federal Procurement Policy in its June 29, 1988 letter to DOD commenting on the April 1988 interim rule.

The Chamber also believes that the rule should state explicitly that the government will not acquire technical data or computer software (regardless of the source of the funding for development of an item, component, or process) unless the government has identified a specific need for such data that cannot be met through other means, such as through direct licensing or non-disclosure agreements. The regulation should also provide that the government will not acquire technical data and computer software for purposes of reprocurement if: (1) a substitute for the original item is commercially available and will meet the performance objectives or (2) performance specifications will provide sufficient information.

If these recommendations are followed, the Chamber believes that a reduction in the paperwork burden associated with this interim rule could be achieved.

Procurement Integrity

A new federal procurement regulation on contractor ethics, which will significantly change the way that all companies do business with the federal government, took effect on July 16, 1989. This regulation implements the "Procurement Integrity" provision of the Office of Federal Procurement Policy Reauthorization Act of 1988 (P.L. 100-679). The new law prohibits contractors from obtaining source selection information that could be related to present or future contracts; it prohibits discussions of post-government employment,

directly or indirectly, with a government procurement official who is "personally and substantially" involved in the procurement; and it prohibits contractors from offering things of value to procurement officials. The law and its prohibitions apply to all contracts of all federal agencies, regardless of value.

In addition, the law imposes certain further obligations on contractors and their employees if the contract value exceeds $100,000. Contractors are obligated to provide written certifications that they are aware of the requirements of the law and that violations or potential violations have been reported. Individual employees must certify annually, and companies must certify before contracts are awarded.

The Chamber fully supports ensuring that federal procurements are conducted with the highest level of ethical standards. While the proposed regulation is intended to achieve this goal, the Chamber is concerned that it fails to provide clear, precise, and unambiguous guidance for the contracting community. Given the severity of penalties for noncompliance, it is essential to ensure that both government and industry personnel completely understand the regulation's restrictions and requirements.

The Chamber believes that the estimates of the annual reporting and recordkeeping burden are understated severely. The information burden estimates bear no relationship to the actual requirements. Signing a certification is only the last step. The estimates do not account for the extensive data collection process prior to this step. Specifically, the reporting burden is estimated to be five minutes per response; the recordkeeping/training burden is assessed to be 20 minutes per response. It is inconceivable that an individual or company would certify to the integrity of a bid or proposal in accordance with the terms of the interim regulation based upon such a limited review of supporting documentation. Further, an adequate ethics training program could not be reasonably accomplished in only 20 minutes.

Noncompliance with this regulation, whether inadvertent or intentional, could result in extremely severe civil, criminal, and contractual penalties, including suspension or debarment, contract termination, and profit recapture. Individuals could receive up to a $100,000 fine and five years imprisonment, and companies up to a $1 million fine. Responsible contractors and their employees who have begun to implement this new reporting and certification requirement believe that it requires multiples of the estimated time to comply.

The Chamber strongly urges OIRA to reevaluate and amend the estimated time burdens to achieve more realistic projections. It also recommends that OIRA require agencies to identify ways to reduce paperwork burdens before granting an OMB control number. The Chamber submitted comments on the May 11, 1989 interim rule on procurement integrity, recommending a number of modifications.

Taxation

In the area of taxation, we identified several examples of laws or regulations that create a significant paperwork burden for individuals and small businesses. These examples also show how laws or regulations can act as a disincentive to investment in our economy.

One example involves the Uniform Capitalization Rules (IRS Code 263A). These rules require businesses to capitalize certain direct and indirect costs, based on a highly complex maze of regulations. Due to their extreme complexity, businesses simply may be unable to comply.

A second area of the tax law that should be reviewed for paperwork reduction is the Passive Activity Loss Regulations (IRS Code 469). These regulations establish standards for determining whether a taxpayer is materially participating in the conduct of a business. The IRS forms and implementing tax regulations are extremely burdensome to small business persons and other entrepreneurs.

Environment

Laboratories must undergo a variety of tests and certifications to qualify for operation with the government. This synopsis describes some of the duplicative paperwork requirements of the process.

The Safe Drinking Water Act of 1979 provides general guidelines for qualifying laboratories for environmental testing at the federal level. The responsibility for "accreditation" has since been delegated to the states. Each state subsequently developed different programs and is unwilling in most cases to grant reciprocity. Therefore, in order for companies to conduct business in more than one state, they must undergo separate, duplicative accreditations. This paperwork burden is the result of misguided federal policy.

In addition, the Environmental Protection Agency (EPA) must qualify laboratories for hazardous waste analyses for Superfund. Rather than accept previously developed state reports, the EPA requires businesses to start from the beginning.

Commercial customers of laboratories consider the Contract Laboratory Program (CLP) -- which qualifies the laboratory for a government contract -- as an "accreditation" process. Therefore, many laboratories seek CLP contracts simply for credibility in the commercial marketplace. This process is extremely paperwork intensive. It is not unusual for a CLP laboratory report to have between 100-300 pages of supporting paperwork. Furthermore, trivial deviations in the report's preparation could lead to receipt of partial payment for services rendered.

Lancaster Laboratories presently employs five full-time persons working in a large lab -- now converted to a paper factory -- generating data packages that are required by several states, the federal government, and many commercial clients, due to EPA's standard-setting process.

A well-run laboratory with a good quality control and assurance system collects supporting documentation and archives the data so that it can be verified at any time. Lancaster Laboratories and the American Council of Independent Laboratories have worked for years to promote a nationally recognized accreditation system that would be technically sound but would not require excessive paperwork. We would welcome OIRA's support in this effort.

In addition, a more broad-based EPA requirement, the Superfund Amendments and Reauthorization Act of 1986, was passed by Congress in late 1986. While this law does not affect Lancaster Laboratories directly, it may have an impact on all manufacturers with Standard Industrial Classification Codes 20 through 39. A new program was originated as part of the reauthorization called the Emergency Planning and Community Right-to-Know Act (Title III). The purpose of the program is to inform communities and individuals of the chemicals present in their areas.

Concerns about the legislation's potential for excessive regulatory burdens were expressed by many in Congress. Representative Norman Lent (R-NY), a key sponsor of the Superfund Amendments, stated, "Although I support the concept of a community's right to know of the risks its businesses pose, I am concerned that the legislation, if misinterpreted, could result in any useful information being buried in an avalanche of unnecessary paperwork."

A key reporting requirement initiated under Title III is the Toxics Release Inventory Reporting. The first industry reporting under Section 313 of Title III was released July 1, 1989 and represents data from calendar year 1988. Companies are required to report for each of the 327 chemicals listed by EPA that are present in their facilities over threshold amounts. EPA Form R must be completed for each chemical. The form is five pages long and requires extensive data collection for accurate completion. EPA estimates that an average of 10 forms would be required for those companies required to report. Each form requires approximately two weeks of man hours to complete (this includes setting up the data base to collect the information for the completion of the form). More than 17,000 firms submitted more than 60,000

forms to EPA. Due to the extensive instructions (more than 15 pages long), many errors were found that could subject a firm to fines because the form did not contain complete information.

Davis-Bacon Act

Another burdensome requirement involves the implementation of the Davis-Bacon Act. Although this does not impact Lancaster Laboratories directly, it does affect many Chamber members.

The Davis-Bacon Act requires that the local prevailing wage rate be paid to workers on federally financed construction, repair, and alteration contracts. Under this Act, employers are required to submit complete payroll records every week. Because of that requirement, approximately 11 million payroll records are submitted annually to the Department of Labor (DOL) at an estimated cost of 5.5 million hours of industry employee time. Furthermore, 5.5 percent of all DOL paperwork is generated by these reports. The DOL and Congressional Budget Office have estimated that $50 million to $100 million is spent on these reports by contractors; the cost is then passed along to taxpayers. This tremendous amount of paperwork discourages small businesses from bidding on contracts because they may have to hire additional clerical help or invest in new equipment to comply, or they simply may be intimidated.

Summary

Although small businesses were intended by Congress to be a primary beneficiary of the PRA, its implementation has not resulted in their receiving the full benefits anticipated when it was passed. There have been very few instances in which an agency adopted, tiered, or simplified requirements for smaller entities, and there has very rarely been any exemption for small business. The Chamber offers the following recommendations:

* OMB should be encouraged to provide the necessary support to OIRA to ensure its ability to fulfill its oversight role of agency regulations.

* The PRA should be amended specifically to require that small business paperwork be targeted for at least a 20 percent net reduction, accounting for new and existing regulations.

* The PRA contemplated the establishment of a FILS, which would permit agencies, before imposing paperwork requirements, to determine the availability of the necessary information from existing paperwork requirements. This can only be accomplished through a government-wide information clearinghouse. To date, however, the FILS has not been implemented. Accordingly, an information clearinghouse should be established and agencies should be required to perform a comprehensive search for available information before proposing additional information demands on the public. Knowing what information is on hand will help to eliminate duplicative and unnecessary information gathering.

* The statute should provide explicit clarification on the scope of the clearance process. Many agency requests for information are made on an ad hoc basis and do not involve completion of a specific form. The Act should clarify the requirement for an OMB control number for this type of information request, which often is equally or more burdensome to businesses.

* In every government request for proposal or quotation package, the responsible agency should be required to certify that all requests for information have current and approved OMB clearance numbers.

* Agencies should be required to publish the results of the information clearance process in the Federal Register. Generally, the public only sees the initial notice of request for an OMB clearance number.

Unfortunately, our written testimony does not include the Chamber's specific recommendations on the draft PRA bill because we only received it Thursday night. However, our first impression is that it would fundamentally undermine the major purpose of this useful statute by limiting OIRA's ability to decrease significantly paperwork in many instances involving regulatory activity. The Chamber will provide its position to the Subcommittee prior to the closing of the record.

The Chamber appreciates this opportunity to present its views on this most important issue. I would be pleased to respond to your questions at this time.

○